IN THE

**SUPREME COURT OF THE UNITED STATES**

October Term, 1979

No. 79-772

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION,

*Petitioner,*

v.

INSTITUTE OF GOVERNMENTAL ADVOCATES,

*Respondent.*

# PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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November 20, 1979

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

The petitioner, the California Fair Political Practices Commission ("FPPC"), respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of California entered in this proceeding on August 23, 1979.

## OPINION BELOW

The opinion of the Supreme Court of the State of California is reported at 25 Cal. 3d 33 (1979) and appears in Appendix I hereto. The judgment and findings of fact

and conclusions of law of the Superior Court of California, County of Los Angeles, from which a direct appeal to the Supreme Court of the State of California was taken, also appear in Appendix I hereto.

## JURISDICTION

The judgment of the Supreme Court of the State of California was entered on August 23, 1979. As part of that judgment, the Court ruled that the California Political Reform Act's prohibition on lobbyists making monetary contributions to state candidates and elected state officials was violative of the First Amendment of the United States Constitution (25 Cal. 3d at 43–45). A timely petition for rehearing on a portion of that judgment not being challenged in this petition for certiorari was denied on October 11, 1979. This petition for certiorari was filed within 90 days of the Court's August 23, 1979, judgment. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

## QUESTIONS PRESENTED

Does the United States Constitution require invalidation of a state statute which, in order to rid government of actual and apparent corruption and bias, prohibits paid lobbyists from making political contributions, or serving as intermediaries for such contributions, to state legislators and other elected state officials?



## STATUTORY PROVISIONS AND ADMINISTRATIVE REGULATIONS INVOLVED

Section 86202 of the California Government Code provides:

> It shall be unlawful for a lobbyist to make a contribution, or to act as an agent or intermediary in the making of any contribution or to arrange for the making of a contribution by himself or by any other person.

Section 86200 of the California Government Code provides that:

> "Contribution" as used in this article means a contribution made to a state candidate, a committee supporting a state candidate, or an elected state officer.

Related statutory provisions (including definitions) and administrative regulations appear in Appendix II hereto.

## STATEMENT OF THE CASE

The Institute of Governmental Advocates ("IGA"), respondent, an organization composed of state lobbyists regulated by the California Political Reform Act of 1974 ("Act"),[1] commenced this action on December 30, 1974, by filing a complaint in the Superior Court, County of Los Angeles, seeking declaratory and injunctive relief. The complaint was a broadside attack upon the constitutionality of the Act in general and sections relating to lobbyists in particular. With regard to Government Code Section 86202, IGA raised a direct "federal ques-

[1] Section 81000 *et seq.* of the California Government Code.

tion" by contending that the section interfered with the rights of its members to contribute financial support to the statewide and legislative candidates of their choice and thus unjustifiably infringed on their constitutional rights of free speech, petition, assembly and association.[2]

On March 14, 1977, the entire action was tried before the Superior Court on a stipulated set of facts. On January 16, 1978, the Court issued its judgment declaring, *inter alia,* Government Code Section 86202 invalid as violative of the United States Constitution.

On February 9, 1978, the Fair Political Practices Commission filed a petition in the California Supreme Court for a writ of mandamus and assumption of jurisdiction. On March 16, 1978, the Supreme Court of the State of California issued an alternative writ of mandamus and assumed jurisdiction.

On August 23, 1979, the California Supreme Court issued its opinion upholding the constitutionality of the Act in general but striking down Section 86202 "because it is not 'closely drawn to avoid unnecessary abridgment of associational freedoms.'" (25 Cal. 3d at 45.) In invalidating Section 86202 the Court relied exclusively on federal constitutional grounds.

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[2] On November 10, 1975, the Superior Court issued a ruling (and preliminary injunction) holding that the "arranging clause" in Section 86202 was invalid insofar as that clause, as interpreted in an advisory opinion by the FPPC, prohibited a lobbyist from making recommendations to his employer concerning to whom the employer should contribute. That ruling was appealed and the State Court of Appeal upheld the trial court's order. *Institute of Governmental Advocates v. Younger,* 70 Cal. App. 3d 878 (1977). No further appeal on this particular matter was taken and the issue was therefore eliminated from the case.



## REASONS FOR GRANTING THE WRIT

I. The Supreme Court of the State of California's decision invalidating the prohibition on contributions by lobbyists is in conflict with clear constitutional standards established by this Court.

### A. *Background: The Political Reform Act of 1974*

The Political Reform Act of 1974 was passed as an initiative measure (Proposition 9) by more than 70 percent of California voters. Much of the impetus for the Act stemmed from the public's concern over the actual and perceived pernicious relationships between lobbyists and elected state officials. Among the findings and declaration of the Act are that:

. . .

(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;

(c) Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from lobbyists and organizations who thereby gain disproportionate influence over governmental decisions;

. . .

(e) Lobbyists often make their contributions to incumbents who cannot be effectively challenged because of election laws and abusive practices which give the incumbent an unfair advantage;

(f) The wealthy individuals and organizations which make large campaign contributions frequently extend their influence by employing lobbyists and spending large amounts to influence legislative and administrative actions; . . . . Government Code Section 81001(b), (c), (e) and (f).

And, among the principal purposes of the Act is that:

The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials; . . . . Government Code Section 81002(c).

In short, the public's interest in enacting the Political Reform Act was "to rid the political system of both apparent and actual corruption and improper influence." (25 Cal. 3d at 45.)

In order to effectuate these purposes, Section 86202 of the Act prohibits lobbyists (as defined) from making political contributions, or serving as intermediaries for such contributions, to state candidates, committees supporting state candidates, and elected state officials.

**B.** ***The Ruling of the California Supreme Court***

The California Supreme Court, while conceding that the voters had a sufficiently important interest to warrant intrusion into the associational freedoms of lobbyists, assigned insufficient weight to that interest and struck down Section 86202 on the grounds that it was not closely enough tailored to avoid unnecessary abridgment of such freedoms. (25 Cal. 3d at 45.) In effect, the Court ruled that something less than an absolute ban on contributions (i.e., a limitation on contributions) was required to pass constitutional muster:



> The claimed state interest is to rid the political system of both apparent and actual corruption and improper influence. Under *Buckley* such a purpose justifies closely drawn restrictions. However, it does not appear that total prohibition of all contributions by any lobbyist is a closely drawn restriction. . . .
>
> [T]he statute does not discriminate between small and large but prohibits all contribution. . . . 25 Cal. 3d at 45.

**C.** ***Argument***

In reaching its decision that Section 86202 was unconstitutional, the California Supreme Court failed to apply the constitutional standards enunciated by this Court in a long series of cases including *Buckley v. Valeo,* 424 U.S. 1 (1976), and *CSC v. Letter Carriers,* 413 U.S. 548 (1973); *Broadrick v. Oklahoma,* 413 U.S. 601 (1973); *United Public Workers v. Mitchell,* 330 U.S. 75 (1947); *United States v. Wurzbach,* 280 U.S. 396 (1930); *Ex parte Curtis,* 106 U.S. 371 (1882) ("government employee cases").

**1.** ***The public interest addressed by Section 86202 is a compelling, not only a substantial, one and therefore justifies a prohibition, rather than merely a limitation, on contributions by lobbyists.***

In California as elsewhere lobbyists are paid for the specific purpose of exercising influence over governmental decisions so that those decisions will be beneficial to the private interests of those who employ them. As a result, lobbyists occupy a unique niche in our political system and, as this Court has recognized, without appropriate mechanisms to regulate their activities:

> The voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as

proponents of the public weal. . . . *United States v. Harriss,* 347 U.S. 612, 625 (1954).

Prior to the adoption of the Political Reform Act, the California campaign contribution process encouraged a system in which lobbyists were able to gain influence and access, not on the basis of the merits of the arguments they espoused but rather on the basis of the financial benefits they could bestow upon public officials. Lobbyist participation in the making of campaign contributions reinforced the public perception that lobbyists wielded disproportionate influence because of the financial resources at their disposal and their ability to utilize such resources to buy access to and influence over government decision makers.[3]

Indeed, the parties to this litigation stipulated that prior to the passage of the Political Reform Act, lobbyists regularly purchased meals and drinks for state officials; provided hunting, fishing and vacation trips for officials and their families; held weekly gatherings at which meals, drinks and entertainment were provided; and had complete control over the campaign funds of their employers, which included the power to determine who and how much an official would receive in political con-

[3] In commenting on the 1974 California elections, one commentator noted that:

> Then, of course there were the lobbyists, who dumped huge amounts of money into campaigns as a last hurrah before Proposition 9, which would prohibit lobbyist donations, went into effect. Several top lobbying groups and individual lobbyists contributed well over $100,000 each. . . . W. Endicott, *California, a New Law,* in H. Alexander (ed.), *Campaign Money: Reform and Reality in the States,* p. 127 (1976).



tributions. They further stipulated that:

> '[S]ome lobbyists engaged in the practices enumerated [above] for the purpose of gaining undue influence over legislators and state officials.'
>
> 25 Cal. 3d, dissent of Bird, C.J., at 61.

In enacting Proposition 9, the people of California concluded that a ban on all monetary political contributions [4] by lobbyists to state officials was absolutely essential in breaking this pattern of actual and apparent corruption and in restoring their confidence in the fairness of state government.[5] This judgment, coming as it did from the voting public itself, should be entitled to great weight—at least as much if not more, in fact, than that traditionally afforded to "legislative" judgments. For it is the attitude, belief and faith of the public in the actual and perceived fairness of their government that is critically important.

While the problem of *actual* corruption conceivably could have been addressed by a limitation rather than

[4] The term "monetary political contributions" is meant to include contributions of money and goods and services for which adequate consideration is not received. Voluntary personal services are specifically excluded from the definition of "contribution." Government Code Section 82015.

[5] This concern was clearly articulated in the official ballot arguments submitted to the voters in support of Proposition 9:

> It's time the people of California put an end to corruption in politics. It is time the politicians are made directly responsible to the people—not to purchased demands of special interests. . . .
>
> Why do powerful interests continue to dominate? Because the business of politics is usually conducted in secret, because in Sacramento lobbyists can provide secret favors to help pass new laws. Because candidates for office must seek increasing amounts of special interest money to meet skyrocketing costs. . . . California Voters Pamphlet, June 4, 1974, Primary Election at 36.

an absolute prohibition on political contributions, such an approach would not have corrected the *appearance* of corruption arising from the spectre of any money passing from lobbyists to legislators and other high ranking elected officials.[6]

This essential distinction was ignored by the California Supreme Court. This Court, however, has clearly recognized that limitations on campaign contributions and other forms of political activities are equally as valid to deal with the appearance of corruption as actual corruption, and that in determining whether a prohibition is sufficiently tailored the objective of ridding the political system of the appearance of corruption is often as compelling as that of ridding the system of actual corruption. In upholding strict campaign contribution limitations in *Buckley* the Court stated:

> Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the *appearance* of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. In *CSC v. Letter Carriers, supra,* the court found that the danger to "fair and effective government" posed by partisan political conduct on the part of federal employees charged with administering the law was a sufficiently important concern to justify broad re-

[6] As the Chief Justice pointed out in her dissent:

> *Access* is the key to influence. Having opened the door, the campaign contribution whether large or small is in a position to speak not only for itself but to deliver a message amplified by the resources of the special interest groups employing the lobbyist. . . . The giving of a campaign contribution, *regardless of size,* is sufficient to establish the necessary access.
>
> 25 Cal. 3d at 61.
> (Emphasis added.)



> strictions on the employees' right of partisan political association. Here, as there, Congress could legitimately conclude that *the avoidance of the appearance of improper influence* "is also critical . . . if confidence in the system of representative Government is not to be eroded to a disasterous extent."
>
> 424 U.S. at 27.
> (Emphasis added.)

And, in dismissing the argument that limitations on *all* contributors, as opposed to those actually seeking improper influence, were overly broad the Court stated:

> Not only is it difficult to isolate suspect contributions, but, more importantly, Congress was justified in concluding that the interest in safeguarding against the *appearance of impropriety* requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated.
>
> 424 U.S. at 30.
> (Emphasis added.)

Similarly, in *Letter Carriers* where the Court upheld a broad ban on political contributions and political activities on the part of federal employees,[7] the Court stressed that:

> There is another consideration in this judgment: it is not only important that the government and its employees in fact avoid practicing political justice, but it is also critical that they *appear* to the public to be

[7] The prohibitions upheld in the government employee cases, in addition to the ban on monetary contributions, included: taking an active part in running a political campaign, actively participating in political fund raising activities, soliciting votes in support of a partisan candidate for public office, running for a partisan office, and endorsing or opposing a partisan candidate for public office in political advertisement, a broadcast, campaign literature, or similar material.

avoiding it. . . . 413 U.S. at 565. (Emphasis added.)

Among the objectives justifying the Hatch Act's (5 U.S.C. 7323 *et seq.*) substantial intrusions into the associational rights of government employees were: to ensure that government employees "enforce the law and execute the programs of the government without bias or favoritism" and that "government employees [should] be free from pressure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors rather than to act out their own beliefs." (413 U.S. at 565, 566.)

The purpose underlying Section 86202's ban on lobbyist contributions is equally as compelling. The objective is to insulate legislators and other elected state officers from the undue monetary pressures of lobbyists and to ensure that they make *and, as importantly appear to make,* decisions in enacting and enforcing laws and in exercising their oversight responsibilities in a manner devoid of favoritism or bias. And, like the Hatch Act's absolute prohibitions, Section 86202's absolute prohibition is essential to effectuating this compelling goal.[8]

[8] Absolute prohibitions on political contributions by labor unions, corporations, national banks and government contractors (2 U.S.C. §441b–441d) have been consistently upheld by lower federal courts. See *United States v. Boyle,* 482 F.2d 75 (D.C. Cir. 1973) cert. denied 414 U.S. 1076 (1973); *United States v. Chestnut,* 394 F. Supp. 581 (S.D.N.Y. 1975) aff'd 533 F.2d 40 (2d Cir. 1976); *United States v. Clifford,* 409 F. Supp. 1070 (E.D.N.Y. 1976); *Federal Election Commission v. Weinsten,* 462 F. Supp. 243 (S.D.N.Y. 1978). As this Court stated in *First National Bank of Boston v. Bellotti,* 435 U.S. 765 (1978): "the overriding *concern* behind the enactment of [these] statutes . . . was the problem of corruption of elected representatives through the creation of political debts. . . . The importance of the governmental *interest in preventing this occurrence has never been doubted.* . . . "435 U.S. at 788, fn. 26. (Citations omitted, emphasis added.)



***2. Section 86202 is sufficiently tailored to meet its compelling public purpose.***

While the purposes underlying the prohibitions in the Hatch Act and Section 86202 are clearly analogous, the prohibition contained in Section 86202 is demonstrably narrower in scope and more precisely tailored to its objective. First, the prohibition applies only to persons who are paid for their lobbying services and who meet the Act's strict definition of lobbyist.

Government Code Section 82039 defines a lobbyist as:

> any person who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action, if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action. . . .

This definition is further refined and restricted by FPPC regulations so as to include only those persons who spend a substantial portion of their time in *regular* and *direct* communication with legislators or other public officials. (2 Cal. Adm. Code Section 18239.) Thus defined, the prohibition applies to approximately 700 individuals, contrasted with the some five million federal employees affected by the broad prohibitions of the Hatch Act.

Second, lobbyists are prohibited from making contributions only to elected *state* officers, candidates for *state* office, and committees supporting such candidates

(Government Code Section 86203)—precisely the officials who are in the best position to influence decisions affecting lobbyists and their employers [9] and with whom lobbyists are, therefore, most likely to have contact. Lobbyists remain free to contribute to local and federal candidates and officials as well as to ballot initiatives and referenda.[10]

Third, and most importantly, aside from banning monetary contributions, Section 86202 leaves all lobbyists free to pursue a full panoply of associational and free speech rights guaranteed by the United States Constitution. Lobbyists are free to endorse candidates, to contribute their voluntary services to candidates and elected state officials, to become active members of political committees, and to otherwise fully participate in the political process.[11] Thus, Section 86202 entails an instrusion into only one portion of the associational rights of lobbyists—the portion adjudged most inimical to the public interest.

In *Buckley* and the government employee cases the Court drew a sharp distinction between restrictions

[9] Contributions are prohibited only to persons holding, or candidates seeking election to, the following offices: State Legislature, Governor, Lieutenant Governor, Attorney General, State Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, and State Board of Equalization. Government Code Sections 86200, 82050, 82024. For a more detailed discussion of the broad duties and influence of these officials, see page 17–18, *infra*.

[10] Government Code Section 86200.

[11] Government Code Section 82015; opinion requested by Elliott J. Dixon, 2 FPPC Opinions 70 (No. 75-187, June 1, 1976); opinion requested by Janet K. Adams, 2 FPPC Opinions 127 (No. 75-173, Aug. 3, 1976).



placed on associational freedoms by campaign laws and restrictions placed upon the rights of expression which lie at the "core" of First Amendment freedoms and thus require a greater state interest to justify interference.[12] Nothing in Section 86202 infringes upon the free speech rights of lobbyists. And, the compelling public interest underlying Section 86202 justifies its limited and tailored intrusion into the associational rights of lobbyists.

Despite the carefully tailored nature of Section 86202, the California Supreme Court nevertheless found fault with the statute, not only because it prohibits rather than limits political contributions by lobbyists, but also because:

> First, the prohibition applies to contributions to any and all [state] candidates even though the lobbyist may never have occasion to lobby the candidate. Secondly, the definition of lobbyist is extremely broad, to include persons who appear regularly before administrative agencies seeking to influence administrative determinations in favor of their clients.
>
> 25 Cal. 3d at 45.

With regard to the Court's first observation, it is true that alternative means for attempting to limit the monetary link between lobbyists and state officials can be imagined as the Court suggests. But such means either would not accomplish the purpose of the Act or would

[12] *Buckley v. Valeo,* 424 U.S. 1, at 25-26, fn. 29, 47–48, fn. 54; *CSC v. Letter Carriers,* 413 U.S. 548, at 568, 575–76, 579. See also, *United States v. CIO,* 335 U.S. 106, concurrence by Justice Frankfurter 124–156 (1948).

impose significantly greater burdens on lobbyists' rights. For example, the Act could have provided that a lobbyist could not lobby any state official to whom he made a contribution. However, such a provision would impose a direct burden on the lobbyist's right to communicate with officials of the government to whom he has made contributions. Alternatively, the Act could have provided that lobbyists could not contribute to officials they had lobbied in the past two years. Such a provision would allow a lobbyist, through contributions, to buy access to or influence over an official he has not lobbied in the past two years, but whom he knows or suspects he will lobby in the near future.

Similarly, the Act could have provided that lobbyists could not contribute to officials they were planning to lobby. Such a provision, however, would be completely unenforceable, turning as it would on the subjective intentions of the lobbyists themselves. It would also necessitate the government becoming involved in an analysis of the intentions and strategies of lobbyists—a far greater threat to their First Amendment rights. In addition, because of the vagaries of committee assignments and voting alignments it is impossible to predict which legislators will wield the determining votes on issues of importance to any given lobbyist. Consequently, to be effective the prohibition must encompass contributions to all legislators.

It is also true, as the Court observes, that Section 86202 prohibits contributions to all state candidates and elected state officers by *all* lobbyists, even those who lobby exclusively before administrative agencies. Such breadth, however, is absolutely essential to effectuating



the purpose of Section 86202. Of the 128 state officers covered by the prohibition, 120 are members of the State Legislature who, in addition to enacting laws, exercise broad budgetary and oversight responsibilities with regard to all executive branch agencies, specifically passing upon the salaries of high ranking executive branch personnel and either confirming or denying their appointments by the Governor. As part of this process, individual legislators exercise considerable influence over "administrative determinations" made by executive agencies.

The other eight positions covered by the prohibition are the Governor, Lieutenant Governor, Attorney General, Treasurer, Controller, Secretary of State, members of the Board of Equalization, and Superintendent of Public Instruction. All of these positions [13] exercise government wide budgetary, legal or oversight responsibilities. Thus, in addition to having considerable influence over the Legislature, they too are in a position to influence administrative determinations significantly. It is important therefore that even lobbyists who limit their activities exclusively to administrative agencies [14] be

[13] One possible exception might be the Superintendent of Public Instruction. The Act, however, contains a standard severability clause. Section 81015 of the Government Code. Consequently, the inclusion of the Superintendent of Public Instruction could have been struck down while leaving the remaining state officials covered.

[14] A person who lobbies exclusively before administrative agencies does not become a "lobbyist" under the Act unless he spends over 200 hours delivering direct testimony in administrative proceedings. 2 Cal. Adm. Code Section 18239(e). Under this test it is estimated that less than 20 persons are lobbyists as a result of their appearances before administrative agencies and most of these appear before the Public Utilities Commission—an agency with exceedingly broad jurisdiction and impact.

prohibited from making contributions to all such officials.

In *Buckley* and the government employee cases this Court upheld the methods selected by Congress to regulate political campaign contributions. In *Buckley* this Court did not require Congress to limit the contributions of only those individuals with matters actually pending or planned before Congress or the President. Similarly, in *Letter Carriers, Broadrick* and *Mitchell,* this Court did not require that there be a direct nexus between the duties and authorities of the government employee wishing to make contributions and the legislative committee assignment of, or other base of influence possessed by, the official to whom the contribution was to be made. Such fine line drawing, given the compelling nature of the public interest to be served, was wisely left to the discretion and judgment of the Congress. The Supreme Court of California should have followed suit and deferred to the judgment exercised by California voters in enacting Section 86202.

II. If the decision of the Supreme Court of the State of California is allowed to stand, unnecessary doubt will be cast upon other federal and state laws which prohibit political contributions by selected groups or entities, and efforts by other states to adopt prohibitions on lobbyist contributions will be deterred.

The essence of the California Supreme Court's ruling is that something less than an absolute prohibition on lobbyist contributions (i.e., a limitation) is required to



pass constitutional muster. Such a ruling casts unnecessary doubt upon a myriad of other absolute prohibitions contained in both federal and state laws.

Persons and entities currently prohibited from making campaign contributions under federal law include federal employees and state employees whose salaries are funded out of federal funds (5 U.S.C. § 7323 *et seq.*), national banks, corporations and labor unions (2 U.S.C. § 441b), government contractors (2 U.S.C. § 441c) and foreign nationals (2 U.S.C. § 441e). Many states have adopted similar laws prohibiting contributions by these same persons and entities.[15]

Although the prohibitions contained in 2 U.S.C. § 441b and § 441c have been upheld by lower federal courts,[16] this Court has never directly addressed a First Amendment challenge to these statutes.[17] And, in the absence of a substantive ruling from this Court,[18] the California Supreme Court's decision will cast doubt upon the continued viability of those lower court decisions.

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[15] Half of the states prohibit contributions from one or more groups of persons or entities. Twenty-two states, for example, prohibit corporate contributions, seven prohibit union contributions; two prohibit contributions from all associations; three prohibit contributions from members of commissions regulating elections, and one prohibits contributions from state employees.

[16] See cases cited in footnote 8. See also *United States v. First National Bank of Cincinnati,* 329 F. Supp. 1251 (S.D. Ohio 1971); *Louchheim, Eng. & People, Inc. v. Carson,* 35 N.C. App. 299, 241 S.E. 2d 401 (1978). The prohibition on contributions by foreign nationals (2 U.S.C. § 441e) has never been challenged.

[17] See generally, *Pipefitters v. United States,* 407 U.S. 385 (1972); *United States v. United Automobile Workers,* 352 U.S. 567 (1957); *United States v. CIO,* 335 U.S. 106 (1948).

[18] The instant case would provide this Court with an excellent vehicle for undertaking an in-depth First Amendment analysis.

To cite but one example, the prohibition on contributions by government contractors (2 U.S.C. § 441c) was recently upheld against a First Amendment challenge in *Federal Election Commission v. Weinsten,* 462 F. Supp. 243, 249 (S.D.N.Y. 1978). This is the only federal court case dealing with an absolute prohibition on contributions in the post-*Buckley* era, and the Court relied principally on *Buckley* and *United States v. Chestnut,* 394 F. Supp. 581 (S.D.N.Y. 1975) in reaching its decision.

The purposes and scope of the government contractor prohibition closely parallel those of Section 86202 of the California Government Code. The government contractor prohibition applies to both individual and corporate contract consultants and, like the prohibition on lobbyist contributions, is designed to ensure that decisions are made (and contracts awarded) on the basis of merit and fair competition rather than on the basis of who has made contributions to the official awarding the contract or his congressional overseers. This compelling public purpose was found to warrant an absolute prohibition on contributions. (462 F. Supp. at 249.) Under the standards enunciated by the California Court, however, the government contractor prohibition would now have to fall. First, it is an absolute prohibition and limitations on contributions by government contractors would be less restrictive. Second, it prohibits contributions to all federal condidates as opposed to only those to whom a contractor may go to solicit business. Finally, it prohibits contributions by contractors who do business exclusively with executive branch agencies and who have no con-



tact with Congress. This same analysis, of course, would be equally applicable to prohibitions on contributions by labor unions, corporations, national banks and foreign nationals.

This example illustrates both the conflict which exists between the California Supreme Court and federal courts as well as the potential impact the California Court's decision may have on the continued viability of other absolute prohibitions in federal law. In addition, the California Court's decision will certainly be cited in efforts to overturn the myriad of state laws which have been patterned after these federal provisions.

As importantly, the California Supreme Court's decision will deter attempts by other states to prohibit contributions by lobbyists. The California Political Reform Act has served as a model for similar political reform statutes in other states. At the present time, some 40 states have laws regulating campaign contributions and/or the activities of lobbyists. Many provisions of these state laws were specifically patterned after provisions in the Political Reform Act. And, while no other state has yet followed California's lead in adopting an absolute prohibition on lobbyist contributions,[19] several state commissions charged with administering political reform laws are actively considering such action.[20] These

[19] The State of Georgia, however, prohibits contributions to state officers by persons representing public utility companies. Georgia Laws 1974, p. 155, as amended: Georgia Code Annotated, § 40-3808.2.

[20] Informal survey taken by Robert M. Stern, Member, Steering Committee, Council on Governmental Ethics Laws, an organization composed of state agencies administering campaign and lobbying laws.

actions will be deterred if the California Supreme Court's decision is allowed to stand. Thus, the actual corruption and appearances of corruption surrounding political contributions by lobbyists will remain unbridled in all 50 states and the public confidence in the fairness of their state governments will continue to decline.

## CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of California.

Respectfully submitted,

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# APPENDIX I

IN THE

**SUPREME COURT OF THE STATE OF CALIFORNIA**

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|---|---|
| FAIR POLITICAL PRACTICES COMMISSION,<br>*Petitioner,*<br>v.<br>THE SUPERIOR COURT OF LOS ANGELES COUNTY,<br>*Respondent;*<br>INSTITUTE OF GOVERNMENTAL ADVOCATES et al.<br>*Real Parties in Interest.* | L.A. 30904 |

The Fair Political Practices Commission petitions for writ of mandate to compel respondent court to vacate a judgment enjoining enforcement of the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.), an initiative measure.

We have stayed enforcement of the judgment except for paragraph 5, "That intervenor Fair Political Practices Commission . . . [is] permanently enjoined from commencing proceedings as civil prosecutor against any lobbyist based on the single act of advising or making a recommendation to the employer of the lobbyist with regard to the making of a political contribution where the advice or recommendation results in a contribution from the employer." This

provision made permanent a preliminary injunction issued in 1975 by Judge Hupp of the superior court, and affirmed in Institute of Governmental Advocates v. Younger (1977) 70 Cal.App.3d 878.

Respondent court declared the entire initiative invalid, holding it violates the one subject rule applicable to initiatives (Cal.Const., art. II, § 8, subd. (d), formerly art. IV, § 22); section 86202 of chapter 6 (prohibiting lobbyist contributions to political campaigns) violates First Amendment and equal protection guarantees; and, with minor exceptions, the remainder of chapter 6 violates equal protection guarantees. Sections of chapter 6 declared invalid include limitations on lobbyist gifts to certain public officials, and disclosure requirements for certain persons and organizations involved with lobbying.

## THE SINGLE SUBJECT RULE

The initiative concerns elections and different methods for preventing corruption and undue influence in political campaigns and governmental activities. Chapters 1 and 2 contain general provisions and definitions, including a severability provision. Chapter 3 establishes the commission. Chapter 4 establishes disclosure requirements for candidates' significant financial supporters. Chapter 5 places limitations on campaign spending. Chapter 6 regulates lobbyist activities. Chapter 7 establishes rules relating to conflict of interest. Chapter 8 establishes rules relating to voter pamphlet summaries of arguments on proposed ballot measures. Chapter 9



regulates ballot position of candidates. Chapter 10 establishes auditing procedures to aid enforcement of the law, and Chapter 11 imposes penalties for violations of the act.

Several sections of the initiative have been held invalid in prior decisions. Under the compulsion of Buckley v. Valeo (1976) 424 U.S. 1, we held sections 85300–85305 limiting expenditures on statewide ballot propositions violated the freedom of speech guarantee of the First Amendment to the United States Constitution. (Citizens for Jobs & Energy v. Fair Political Practices Com. (1976) 16 Cal.3d 671.) In Hardie v. Eu (1976) 18 Cal.3d 371, we concluded Government Code sections 85200–85202 limiting the amount to be expended for circulation of initiative petitions was in conflict with First Amendment guarantees, again relying on *Buckley*. In Institute of Governmental Advocates v. Younger, *supra,* 70 Cal.App. 3d 878, the Court of Appeal held that a commission ruling precluding lobbyists from advising their employers to make political contributions violated First Amendment guarantees.

The California Constitution, article II, section 8, subdivision (d), states: "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

The single subject requirement for initiative measures was adopted in 1948 as article IV, section lc. The next year this court in Perry v. Jordan (1949) 34 Cal. 2d 87, 92–93, construed the provision as follows: "The problem of whether more than one subject is embraced with-

in one legislative act is not new in this state. Although section 1c has been newly added extending the requirement to initiative constitutional amendments, the Constitution for many years has required that 'Every act shall embrace but one subject, which subject shall be expressed in its title.' (Cal.Const., art. IV, § 24.) The proper scope and application of that provision as to singleness of subject was elucidated, as the latest word on the subject, by this court in *Evans* v. *Superior Court,* 215 Cal. 58, 62 [8 P.2d 467], upholding the adoption of the Probate Code in a single enactment: ' . . . we are of the view that the provision is not to receive a narrow or technical construction in all cases, but is to be construed liberally to uphold proper legislation, all parts of which are reasonably germane. (*Heron* v. *Riley,* 209 Cal. 507, 510 [289 P. 160].) The provision was not enacted to provide means for the overthrow of legitimate legislation. (*McClure* v. *Riley,* 198 Cal. 23, 26 [243 P. 429].) . . . [¶] Numerous provisions, having one general object, if fairly indicated in the title, may be united in one act. Provisions governing projects so related and interdependent as to constitute a single scheme may be properly included within a single act. (*Barber* v. *Galloway,* 195 Cal. 1, 3 [231 P. 34].) The legislature may insert in a single act all legislation germane to the general subject as expressed in its title and within the field of legislation suggested thereby. (*Treat* v. *Los Angeles Gas Corp.,* 82 Cal.App. 610 [256 P. 447].) Provisions which are logically germane to the title of the act, and are included within its scope, may be united. The general purpose of a statute being declared, the details provided for its accomplishment will be regarded as necessary incidents. (*Estate of Wellings,* 192 Cal. 506, 519 [221 P. 628]; *Buelke* v. *Levenstadt,* 190 Cal. 684, 687 [214 P. 42]; and cases cited.) The language of this court in *Robinson* v. *Kerrigan,* 151 Cal. 40, 51 [121 Am.St.Rep. 90, 12 Ann. Cas. 829, 90 P. 129], is especially applicable to this case at this point. A provision which conduces to the act, or which is auxiliary to and promotive of its main purpose, or has a necessary and natural connection with such purpose is germane within the rule. . . . Our conclusion, therefore, is that the newly enacted Probate Code does not embrace more than one subject. Its numerous provisions have one general object. The classification of these provisions, made by the code commission, and carried into the title of the act, is a "reasonably intelligent reference to the subject to which the legislation of the act is to be addressed", which is all that is requisite.' (See, also, cases collected in 23 Cal.Jur. 646–650; 50 Am.Jur., Statutes, §§ 196–199.) When the scope and meaning of words or phrases in the statute have been repeatedly interpreted by the courts, there is some indication that the use of them in a subsequent statute in a similar setting carries with it a like construction. (*City of Long Beach* v. *Payne,* 3 Cal.2d 184 [44 P.2d 305].) There is nothing in the argument to the voters when section 1c of article IV was adopted contrary to such construction or the purposes underlying the 'one subject' limitation."



Relying upon *Perry* v. *Jordan,* this court applied the reasonably germane test and upheld the California Wa-

ter Resources Development Bond Act in Metropolitan Water Dist. v. Marquardt (1963) 59 Cal.2d 159, 172–173. The act provided for issuance of nearly $2 billion in bonds, the proceeds to be used for dams, levees, channel improvements, a water distribution system, drainage facilities, electrical energy generation and transmission systems, and local water development facilities.

Recently, we rejected a claim that the one subject requirement was violated by an initiative limiting real property tax rates, limiting real property assessments, restricting state taxes, and restricting local taxes. (Cal. Const., art. XIII, A; the Jarvis-Gann Initiative.) We held that all provisions were functionally related and reasonably germane to the subject of property tax relief. (Amador Valley Joint Union High Schl. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 231.)[2]

Real party in interest Institute of Governmental Advocates (Advocates) argues that a more restrictive test should be applied in determining compliance with the one subject requirement applicable to initiatives than to the same requirement applicable to legislation. Two reasons are offered for a more restrictive test: the lengthy ballot propositions, having numerous provisions, will mislead and confuse the voter, and danger exists that voters wanting one or more of the provisions offered

[2] A Michigan statute adopted by the Legislature—containing provisions similar to those before us—was held to violate the one subject requirement. (In re Advisory Opinion (Being 1975 PA 227) (1976) 240 N.W.2d 193.) As an alternate ground of decision, the Washington Supreme Court held that a similar initiative involved only a single subject. (Fritz v. Gorton (1974) 517 P.2d 911, 920–921.)



might vote for the proposition even though they reject other provisions—a danger of so-called "log rolling." (See Schmitz v. Younger (1978) 21 Cal.3d 90, 93, 97 et seq. (dis. opn.).)

Advocates does not articulate a particular test to replace the reasonably germane test. Rather, Advocates takes the position that the reasons for a more restrictive test necessarily provide the measure of such test. Advocates claims both reasons apply to the Political Reform Act of 1974, asserting the initiative is lengthy and confusing—containing more than 20,000 words and numerous interrelated provisions—and that it involves four wholly separate substantive subjects: (1) regulation of election to public office, (2) regulation of ballot measure petitions and elections, (3) regulation of public official conflicts of interest, and (4) regulation of lobbyists.[3]

[3] Each of the four headings is further broken down as follows: '1. *Regulation of election to public office.* The provisions of the Act dealing with this subject include regulations pertaining to: [¶] Campaign committee organization (§§ 84100–84103). [¶] Required reporting of campaign contributions and expenditures (§§ 84200–84214). [¶] Limitations upon campaign contributions (§§ 84300–84304). [¶] Requirements respecting mass mailings (§ 84305). [¶] Limitation of campaign expenditures by statewide candidates (§§ 85100–95108 [later repealed]). [¶] Regulation of the position of candidates on the ballot (§ 89000). [¶] Prohibition of sending of legislative newsletters or other mass mailings at public expense on behalf of any elected state officer after he has filed a declaration of candidacy (§ 89001). [¶] 2. *Regulation of ballot measure petitions and elections.* The provisions of the Act dealing with this subject include regulations pertaining to [¶] Campaign committee organization (§§ 84100–84103). [¶] Required reporting of ballot measure campaign contributions and expenditures (§§ 84200–84214). [¶] Limitation of expenditures in furtherance of circulation and qualification of statewide petitions (§§ 85200–85202 [later repealed]). [¶] Information required to appear on statewide petitions (§ 86203 [later repealed]). [¶] Limitation of expenditures for or against

Consistent with our duty to uphold the people's right to initiative process, we adhere to the reasonably germane test and, in doing so, find that the measure before us complies with the one subject requirement.

> "The amendment of the California Constitution in 1911 to provide for the initiative and referendum signifies one of the outstanding achievements of the progressive movement of the early 1900's. Drafted in light of the theory that all power of government ultimately resides in the prople, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. Declaring it 'the duty of the courts to jealously guard this right of the people' (*Martin* v. *Smith* (1959) 176 Cal.App.2d 115, 117 [1 Cal.Rptr. 307]), the courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process' (*Mervynne* v. *Acker*, . . . 189 Cal.App.2d 558, 563). '[I]t has long been our judicial policy to apply a liberal construction to this power whereever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.' (*Mervynne* v. *Acker, supra,* 189 Cal.App.2d 558, 563–564; *Gayle* v. *Hamm*, . . . 25 Cal.App.3d 250, 258.)" (Associated Home Builders etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 591 (fns. omitted); Farley v. Healey (1967) 67 Cal.2d 325, 328.)

In keeping with the policy favoring the initiative, the voters may not be limited to brief general statements but may deal comprehensively and in detail with an area of law.

Although the initiative measure before us is wordy and complex, there is little reason to expect that claimed voter confusion could be eliminated or substantially reduced by dividing the measure into four or ten separate propositions. Our society being complex, the rules governing it whether adopted by legislation or initiative will necessarily be complex. Unless we are to repudiate or cripple use of the initiative, risk of confusion must be borne.

Nor does the possibility that some voters might vote for the measure—while objecting to some parts—warrant rejection of the reasonably germane test. Such risk is inherent in any initiative containing more than one sentence or even an "and" in a single sentence unless the provisions are redundant. For example, the Jarvis-

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adoption of state ballot measures (§§ 85300–85305 [later repealed]). [¶] Requirements as to form and content of State ballot pamphlet (§§ 88001–88002, 88004–88005). [¶] Duties of Secretary of State, Legislative Analyst and Legislative Counsel regarding State ballot pamphlet (§§ 88000, 88003, 88005.5). [¶] Right of public to examine State ballot pamphlet prior to printing; judicial review of ballot pamphlet prior to printing (§ 88006). [¶] 3. *Regulation of public official conflicts of interest.* The provisions of the Act dealing with this subject include regulations pertaining to [¶] Prohibition of actions by a public official to influence governmental decisions in which he has a financial interest (§§ 87100–87103). [¶] Required disclosure by public officials of investments and interests in real property (§§ 87200–87207). [¶] Mandatory adoption of conflict of interest codes by state agencies and local governmental agencies (§§ 87300–87312). [¶] 4. *Regulation of lobbyists.* The provisions of the Act dealing with this subject include regulations pertaining to [¶] Registration of lobbyists (§§ 86100–86104). [¶] Accounts required to be established and maintained by lobbyists (§§ 86105–86106). [¶] Reporting of receipts and expenditures by lobbyists (§ 86107). [¶] Prohibition of campaign contributions and limitations of gifts by lobbyists (§§ 86202, 86203). [¶] Other prohibitions imposed upon lobbyists regarding the practice of their profession (§ 86205)."

Gann initiative (Cal.Const., art. XIII A) provided limitations on property taxes and restrictions on state and other local taxes. (See Amador Valley Joint Union High Schl. Dist. v. State Bd. of Equalization, *supra*, 22 Cal.3d 208.) Some property owners may have voted for the measure primarily because of the property tax relief, while having questions about the state and other local tax restrictions. Similarly some nonproperty owners may have voted for the initiative primarily because of the restrictions on other state and local taxes, while having reservations as to the property tax limitations.

The enactment of laws whether by the Legislature or by the voters in the last analysis always presents the issue whether on balance the proposed act's benefits exceed its shortcomings. If so, the remedy for shortcomings is repeal, which will be difficult whether the law is adopted by the Legislature or the people. The difficulty of repeal is merely one factor to be considered by legislators and voters when casting their votes.

Given the widespread public debate of initiatives, the explanations in the ballot pamphlets and in the media, and the huge volume of legislative business—over 1,000 bills enacted each year—it is unreasonable to assume that initiative measures receive less scrutiny than proposed legislation.

The people having reserved the legislative power to themselves as well as having granted it to the Legislature, there is no reason to hold that the people's power is more limited than that of the Legislature, and the single subject requirements applicable to both powers (Cal.Const., art. II, § 8, subd. (d); art. IV, § 9) should not



be used to establish inequality. (Cf. Associated Home Builders etc. Inc. v. City of Livermore, *supra*, 18 Cal.3d 582, 591–592.) Accordingly, we adhere to the reasonably germane test for both.

The provisions of the initiative are reasonably germane to the subject of political practices, and there is no violation of the one subject requirement.

## LOBBYIST REGULATION

### A. *Contributions*

Section 86202 provides: "It shall be unlawful for a lobbyist to make a contribution, or to act as an agent or intermediary in the making of any contribution by himself or by any other person." "Contribution" means a "contribution made to a state candidate, a committee supporting a state candidate, or an elected state officer." (§ 86200.) " 'Lobbyist' means any person who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action, if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action. No person is a lobbyist by reason of activities described in Section 86300." [4] (§ 82039.) There is no prohibition against contributions by employers of lobbyists.

[4] Section 86300 exempts certain activities of governmental officials and employees, the media, and church representatives.

In Institute of Governmental Advocates v. Younger, *supra,* 70 Cal.App. 3d 878, as pointed out earlier, the Court of Appeal on First Amendment grounds invalidated a commission ruling based on section 86202, precluding lobbyists from advising their employers to make political contributions.

In Buckley v. Valeo, *supra,* 424 U.S. 1, 23–38, the United States Supreme Court considered the validity of provisions of the Federal Election Campaign Act of 1971 as amended limiting the amount of political contribution by individuals to $1,000 for any candidate and $25,000 total. The court held that contribution limitations restrict the contributor's freedom of association, "a 'basic constitutional freedom,' Kusper v. Pontikes, 414 U.S. at 57, that is 'closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society.' Shelton v. Tucker, 364 U.S. 479, 486 (1960). See, e.g., Bates v. Little Rock, 361 U.S. 516, 522–523 (1960); NAACP v. Alabama, *supra,* at 460–461; NAACP v. Button, 371 U.S. at 452 (Harlan, J., dissenting)." (424 U.S. at p. 25.)

The court pointed out that under our system of private financing of elections, effective candidacy requires large sums of money for the communication media and mass mailing to allow effective discussion of candidacies and campaign issues. (424 U.S. at pp. 26–29.) It is apparent that unless an individual is permitted to participate in the election by contributing to candidates, his political voice may be quieted.



The right to associate being fundamental, any governmental action in curtailment of it " 'is subject to the closest scrutiny.' " Recognizing that the right is not absolute, the court said that significant interference may be sustained if the "State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." (424 U.S. at p. 25.)

The court concluded that the government's interest in limiting actual or apparent corruption resulting from large individual political *contributions* is sufficient justification for restricting associational freedoms and the limitation "focuses precisely on the problem of large campaign contributions—the narrow aspect of political association where the actuality and potential for corruption have been identified." (424 U.S. at pp. 24–29.) However, the court also concluded the governmental interest in preventing corruption and its appearance is insufficient justification for limitations on political *expenditures.* (424 U.S. at pp. 45–47; Hardie v. Eu, *supra,* 18 Cal.3d 371, 377; Citizens for Jobs & Energy v. Fair Political Practices Com., *supra,* 16 Cal.3d 671, 674–675.)

A sufficiently compelling governmental interest justifying substantial interference with political rights was also found in CSC v. Letter Carriers (1972) 413 U.S. 548. Upholding the Hatch Act limiting political activity of governmental employees, the court identified three governmental interests that could be harmed if governmental employees could participate publicly in political activities: (1) governmental employment and promo-

tion might depend upon the extent of participation rather than governmental efficiency, (2) the large number of governmental employees might become a huge political machine defeating our democratic processes, and (3) partisan political activity might impair the employee's ability to act fairly without bias or favoritism. (413 U.S. at pp. 564–567.)

Obviously, the prohibition against lobbyist contributions in section 86200 is a substantial restriction on the lobbyists' freedom of association, and the restriction may be upheld only if the "State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." (Buckley v. Valeo, *supra,* 424 U.S. 1, 25.) The statute fails to meet the test.

The claimed state interest is to rid the political system of both apparent and actual corruption and improper influence. Under *Buckley* such a purpose justifies closely drawn restrictions. However, it does not appear that total prohibition of all contributions by any lobbyist is a closely drawn restriction.

First, the prohibition applies to contributions to any and all candidates even though the lobbyist may never have occasion to lobby the candidate. Secondly, the definition of lobbyist is extremely broad, to include persons who appear regularly before administrative agencies seeking to influence administrative determinations in favor of their clients. Thirdly, the statute does not discriminate between small and large but prohibits all contribution. Thus, it is not narrowly directed to the aspects of political association where potential corruption might be identified.



While either apparent or actual political corruption might warrant some restriction of lobbyist associational freedom, it does not warrant total prohibition of all contributions by all lobbyists to all candidates.

The governmental interests held to warrant substantial restrictions on political rights in CSC v. Letter Carriers, *supra,* 413 U.S. 548, have no greater application to lobbyists than to other private campaign contributors.

Section 86202 is invalid because it is not "closely drawn to avoid unnecessary abridgment of associational freedoms." (Buckley v. Valeo, *supra,* 424 U.S. 1, 25.) This makes it unnecessary to discuss whether the section results in a denial of equal protection.

**B. *Gifts and Other Lobbyist and Employer Regulations***

Lobbyists are prohibited from making gifts of more than $10 in any month to any state candidate, a legislative agency or elective state official or from participating in gifts by any other person. (§§ 86201, 86203.) Lobbyists are also required to register and to report all payments for lobbying activities, the names of those supplying the funds and the amounts they furnished, disbursements from the funds received, and any transactions with candidates or legislative agency, or state elective officials or their families. (§§ 86100–86107.) Lobbyists' reports must include any transaction totalling $500 or more in a single year with business entities in which the lobbyist knows or has reason to know that any state candidate, or legislative, agency, or elective official is a proprietor, partner, director, officer or manager or

has more than a 50 percent interest. (See, § 86107, subd. (e).) Lobbyists must also report a "specific description of legislative or administrative action which the lobbyist has influenced or attempted to influence, and the agencies involved, if any." (§ 86107, subd. (f).)

Persons who employ a lobbyist or pay $250 in any month to influence legislative or administrative action must also file reports. Among other matters, the reports must disclose businesses engaged in, the total amount of payments to influence legislative or administrative action, any contributions made, the names of persons who received $25 or more, and a specific description of legislative or administrative action sought to be influenced. (§ 86109.) The transaction reporting requirement differs from that applicable to lobbyists, applying only to transactions totalling more than $1,000 per year. (*Id.,* subd. (d) (e).)

Among the fundamental rights guaranteed by the First Amendment to the United States Constitution is the right to "petition the Government for a redress of grievances." The lobbyist's function obviously is to exercise such right on behalf of his employer. The challenged statutes do not directly limit or restrict the right to petition. Rather, the registration and reporting requirements impose burdens on the right to petition, and the gift limitation affects the form of the petition. All may petition provided they bear the burden of registration and reporting and do not offer excessive gifts.

Advocates claims that because speech and petition rights are affected, the strict scrutiny rule is applicable.



Although a fundamental interest may be involved, both the United States Supreme Court and this court have recognized that not every limitation or incidental burden on a fundamental right is subject to the strict scrutiny standard. When the regulation merely has an incidental effect on exercise of protected rights, strict scrutiny is not applied. (E.g., Zablocki v. Redhail (1978) 98 S.Ct. 673, 681–683 [regulations affecting the right to marry]; Califano v. Jobst (1977) 98 S.Ct. 95, 99 [same]; Kash Enterprises, Inc. v. City of Los Angeles (1977) 19 Cal.3d 294, 303–305 [reasonable limitations on placement of newspaper racks]; Gould v. Grubb (1975) 14 Cal.3d 661, 670 [rational basis standard applicable to numerous statutes detailing the mechanisms of the right to vote].) It is only when there exists a real and appreciable impact on, or a significant interference with the exercise of the fundamental right that the strict scrutiny doctrine will be applied. (Zablocki v. Redhail, *supra,* 98 S.Ct. 673, 681; Gould v. Grubb, *supra,* 14 Cal.3d 661, 670.)

In United States v. Harriss (1953) 347 U.S. 612, 625–626, the court upheld the Federal Regulation of Lobbying Act which required lobbyists to report lobbying receipts and expenditures against challenges that it violated the guarantees of freedom to speak, publish, and petition. Pointing out that Congress had not sought to prohibit lobbying, the court concluded that Congress has a valid interest in determining the source of voices seeking to influence legislation and could reasonably require the professional lobbyist to identify himself and disclose his lobbying activities. This court has also

upheld reasonable statutes requiring disclosure of financial activities of persons engaged in political processes. (Brown v. Superior Court (1971) 5 Cal.3d 509, 519–523; cf. County of Nevada v. MacMillen (1974) 11 Cal.3d 662, 670–672.)

As pointed out above, the registration, reporting, and gift provisions are not direct limitations on the right to petition for redress of grievances. Application of the burdens of registration and disclosure of receipts and expenditure to lobbyists does not substantially interfere with the ability of the lobbyist to raise his voice. While the burden of disclosure might be substantial for those engaging in extensive lobbying activities, the burden is not great when viewed in the context of the total activities engaged in. Requiring a person engaged in a business to describe it and to report its receipts and expenses may not be viewed in our commercial society as a substantial impediment to engaging in that business.

Similarly, the burden placed on employers of lobbyists to disclose their expenditures for lobbying purposes, and the action thereby sought to be influenced, does not constitute a substantial interference with the exercise of petition and speech rights.

On the basis of *Harriss* and *Brown,* we sustain the validity of the provisions requiring the registration of lobbyists and their employers and the reporting of lobbying receipts, expenditures, and activities and employers' businesses.

The limitation on lobbyist gifts, affecting only the form of the petition, also does not have a real and appreciable impact on the legitimate exercise of the rights of



petition and speech, and the strict scrutiny test is inapplicable.

On the other hand, the transaction reporting requirements will often be so onerous as to constitute a significant interference with the fundamental right to petition. The extent of reporting required is not directly related to the extent of lobbying activities but is determined mainly by lobbyist and employer transactions with others, which may be entirely unrelated to lobbyist activities. For example, the reporting requirement as to business transactions applies to transactions with a business entity where any state candidate, or legislative, agency, or elective state official is a director. (§ 86109, subd. (e).) Accordingly, if a director of the Bank of America is also an agency official—perhaps a Regent of the University of California—a lobbyist and any person who employs a lobbyist or spends more than $250 in a single month to influence legislative or administrative Action must disclose transactions above the statutory amount with the Bank of America. The requirement applies even though the lobbying activities have nothing to do with the university or banks. Because directors of many major corporations serve on boards and other administrative agencies, the transaction reporting requirement may be extremely burdensome, and persons and business, union or other organizations who only seek to influence governmental action on an isolated basis will be deterred from doing so by the burdensome reporting requirements.

Because the transaction reporting requirements will often constitute a significant interference with the fundamental right to petition, the strict scrutiny doctrine is applicable. The requirements may be upheld only if the state demonstrates sufficiently important interests and the statute "is closely tailored to effectuate only those interests." (Zablocki v. Redhail, *supra,* 98 S.Ct. 673, 682; Buckley v. Valeo, *supra,* 424 U.S. 1, 25.) Even if the compelling state interest is present, the restriction on First Amendment activities must be drawn with narrow specificity to avoid arbitrary and unnecessary curtailment of the protected freedom. (Kash Enterprises, Inc. v. City of Los Angeles, *supra,* 19 Cal. 3d 294, 303; Fort v. Civil Service Com. (1964) 61 Cal. 2d 331, 337–338.)

We have considered the validity of disclosure requirements of financial activities of public officials and employees and held invalid a statute which "would intrude alike into the relevant and the irrelevant private financial affairs . . . and is not limited to only such holdings as might be affected by the duties or functions of a particular office." (City of Carmel-By-The-Sea v. Young (1970) 2 Cal. 3d 259, 272; County of Nevada v. MacMillen, *supra,* 11 Cal. 3d 662, 671.) We are satisfied that the right to petition for redress of grievances similarly may not be conditioned upon disclosure of irrelevant private financial matters unrelated to the petition activity. Because the transaction reporting requirements apply to transactions having no relation to the lobbying activities, they are not "closely tailored" to any legitimate state interest in the regulation of lobbying but constitute an unnecessary curtailment of the right to petition.



## CONCLUSION

In sum, we conclude: The prohibition against lobbyist contributions set forth in section 86202 is a substantial limitation on associational freedoms guaranteed by the First Amendment, and is invalid. The right to petition for grievances guaranteed by the First Amendment may not be conditioned on disclosure of private financial matters irrelevant to the petition activity and section 86107, subdivisions (d) and (e) and section 86109, subdivisions (d) and (e) are therefore invalid. However, the other reporting requirements, the registration requirements, and the limitation on gifts do not constitute substantial limitations on petition and speech rights, and the challenge to those provisions is rejected. Finally, the Political Reform Act of 1974 does not involve multiple subjects in violation of California Constitution, article II, section 8, subdivision (d).

Let a writ of mandate issue directing respondent court to vacate its judgment and to enter judgment in accordance with the views expressed herein.

Clark, J.

WE CONCUR:

Mosk, J.
Richardson, J.

**FAIR POLITICAL PRACTICES COMM. v.
SUPERIOR COURT L.A. 30904**

**CONCURRING OPINION BY TOBRINER, J.**

In Schmitz v. Younger (1978) 21 Cal.3d 90, I joined Justice Manuel's dissenting opinion, which concluded (1) that "the special nature of the initiative process requires a narrower construction" of the one subject requirement than the limitation on legislative bills, and (2) that "to satisfy the one-subject requirement, an initiative's provisions must be functionally related in furtherance of a common underlying purpose." (21 Cal.3d at pp. 99–100.) I continue to adhere to that position today. Unlike Justice Manuel, however, I believe that the 1974 Political Reform Act satisfies the standard enunciated in the *Schmitz* dissent. Accordingly, I agree with the majority that the lower court erred in invalidating the entire act. With respect to the remaining issues, I join in the majority's analysis and conclusions.

Tobriner, J.



**FAIR POLITICAL PRACTICES COMM. v.
SUPERIOR COURT L.A. 30904**

**CONCURRING AND DISSENTING OPINION BY NEWMAN, J.**

I agree with the majority's conclusion that the single subject rule has not been violated. I do not agree, however, that enforcement of sections 86202, 86107, subdivisions (d) and (e), and 86109, subdivisions (d) and (e) of the Political Reform Act of 1974 [1] should be enjoined.

In my view the majority opinion does not adequately advise California legislators and citizens generally as to their powers to regulate lobbying.

Language reading substantially as follows has been part of the California Constitution for 100 years: "A person who seeks to influence the vote or action of a member of the Legislature in the member's legislative capacity by bribery, promise of reward, intimidation, or other dishonest means, or a member of the Legislature so influenced, is guilty of a felony." (Art. IV, § 15.) In 1972 the electors commanded additionally that "[t]he Legislature shall . . . provide for . . . free elections" and "shall prohibit improper practices that affects elections . . . ." (Art. II, § 3 and § 4.) Two years later, apparently because they believed that regulations complementing the constitutional language were essential, the electors via the initiative approved the Political Reform Act of 1974.

[1] Government Code section 81000 et seq.

The majority opinion states, "The claimed state interest is to rid the political system of both apparent and actual corruption and improper influence." (*Ante,* p. ___.)* That is an unconscionably bowdlerized paraphrase of complex aims that in the initiative measure were declared to be as follows (and note especially the declaration that "[p]revious laws regulating political practices have suffered from inadequate enforcement by state and local authorities" [2]):

"The people find and declare as follows:

"(a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;

"(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;

"(c) Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from lobbyists and organizations who thereby gain disproportionate influence over governmental decisions;

"(d) The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate;

"(e) Lobbyists often make their contributions to

* Typed opinion, page 17.

[2] Compare Newman, Legal Aspects of Representation, California Laws on Lobbying, Legislators' Orientation Conference (1959) pages 125–130.



incumbents who cannot be effectively challenged because of election laws and abusive practices which give the incumbent an unfair advantage;

"(f) The wealthy individuals and organizations which make large campaign contributions frequently extend their influence by employing lobbyists and spending large amounts to influence legislative and administrative actions;

"(g) The influence of large campaign contributors in ballot measure elections is increased because the ballot pamphlet mailed to the voters by the state is difficult to read and almost impossible for a layman to understand; and

"(h) Previous laws regulating political practices have suffered from inadequate enforcement by state and local authorities." (Gov. Code, § 81001.)

"The people enact this title to accomplish the following purposes:

"(a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited;

"(b) The amounts that may be expended in statewide elections should be limited in order that the importance of money in such elections may be reduced;

"(c) The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials;

"(d) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided;

"(e) The state ballot pamphlet should be converted into a useful document so that voters will not be entirely dependent on paid advertising for information regarding state measure;

"(f) Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly; and

"(g) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced." (Gov. Code, § 81002.)

"This title should be liberally construed to accomplish its purposes." (Gov. Code, § 81003.)

Who are lobbyists? The majority opinion correctly quotes section 82039 as follows: " 'Lobbyist' means any person who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action, if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action. No person is a lobbyist by reason of activities described in Section 86300." Not mentioned, however, is section 82002, which tells us that " '[a]dministrative action' means the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding, which shall include any proceeding governed by Chapter 4.5 of Division 3 of Title 2 of the



Government Code (beginning with Section 11371)." That definition, I think, disposes of the majority's comment that "the definition of lobbyist is extremely broad, to include persons who appear regularly before administrative agencies seeking to influence administrative determinations in favor of their clients." (Majority opn., *ante,* p. ____.) * In other words, and presumably because rule making is comparable to statute making,[3] the electors approved the regulation of administrative as well as legislative lobbying. I do not regard that as unreasonable, and I do not agree that "[t]he governmental interests held to warrant substantial restrictions on political rights . . . have no greater application to lobbyists than to other private campaign contributors." (Id., p.____.) **

Nor do I accept the majority's suggestion that prohibition of contributions is suspect when "the lobbyist may never have occasion to lobby the candidate." (*Id.,* p.___.) * What if the candidate is a relative, a friend, or a potential colleague, political or professional, of persons whom the lobbyist does intend to lobby? The search for "disproportionate influence over governmental decisions" (Gov. Code, § 81001, subd. (c)) can cause campaign funds to flow in channels that become labyrinthine, producing effects that sometimes seem almost subliminal.

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[3] "Rulemaking is the administrative counterpart of what a legislative body does when it enacts a statute." (Davis, Administrative Law and Government (2d ed. 1975) p. 118.)

* Typed opinion, page 17, last paragraph.

** Typed opinion, page 18.

* Typed opinion, page 17.

How, I wonder, do the following words from the majority opinion enlighten legislators and citizens? "[T]he statute [Gov. Code, § 86202] does not discriminate between small and large but prohibits all contribution. Thus, it is not narrowly directed to the aspects of political association where potential corruption might be identified." (Majority opn., *ante,* p.___.)** As I indicated above, to imply that "corruption" was the sole evil the electors sought to eradicate seems simplistic, almost quaint.

The Political Reform Act of 1974 is not a prototype of sapient drafting. Section 81012 does, however, anticipate possible needs for amendment. Given the complex findings, declarations, and statements of purpose that the electors chose to set forth in sections 81001 and 81002, *ante,* I contend that courts are best advised to await further legislative consideration. They should not comb the law now for clauses that, under varying opinions of the United States Supreme Court (particularly as to "strict scrutiny"), in a more routinely motivated law might be categorized as insufficiently "tailored." The majority opinion, for instance, so labels clauses that arguably involve "irrelevant private financial matters unrelated to the petition activity." (*Ante,* p.___.)* To achieve the declared and legitimate aims of the law before us in this case, I submit that defining the appropriate borderlines of that kind of relevance is a task best assigned to legislators and administrators, not judges.

NEWMAN, J.

** Typed opinion, page 17.
* Typed opinion, page 25.



## FAIR POLITICAL PRACTICES COMM. v. SUPERIOR COURT L.A. 30904

## DISSENTING OPINION BY MANUEL, J.

I dissent. In my view the trial court correctly held that the 1974 Political Reform Act is invalid and void in its entirety because it embrac[es] more than one subject" in violation of the provisions of article II, section 8, subdivision (d) of the state Constitution, the so-called single subject rule. Accordingly, I would deny the writ.

It has now been more than 30 years since this court, in the case of McFadden v. Jordan (1948) 32 Cal.2d 330, carefully laid to rest the notion that the initiative power of the people, by virtue of its unique and precious nature as well as its consitutional source, is to be considered free of all constitutional constraints on its exercise. In my view the majority, by applying the single subject rule in a manner which is tantamount to its nullification, has today taken a significant step toward the resurrection of that notion.

In the *McFadden* case, which must form the basis of any proper understanding of the initiative single subject rule, we were faced with an initiative proposal consisting of 12 separate sections and 208 subsections which, in the compass of more than 21,000 words, treated a wide variety of subjects ranging from reapportionment to oleomargarine. Although we noted the dangers inherent in such a manner of presentation,[1] the Constitution

[1] "The proposal," we said "is offered as a *single amendment* but it obviously is multifarious. It does not give the people an opportunity to express approval or disapproval severally as to each major change suggested; rather does it, apparently, have the purpose of aggregating for the measure the favorable votes from electors of many suasions who, wanting strongly enough

at that time contained no provision precluding it, and we were therefore unable to ground our decision directly on this point. Because, however, of the comprehensive scope and effect of the proposal viewed as a whole, we concluded that it amounted to a *revision* of the Constitution, which by express provision could be accomplished only through the convening of a constitutional convention prior to submission to the people for ratification.

The initiative single subject rule, now contained in article II, section 8, subdivision (d) of the Constitution, is a direct outgrowth of the *McFadden* decision. The 1948 Legislature, obviously perceiving that some future "multifarious" initiative might not be so comprehensive as to amount to a constitutional revision, and obviously being mindful of the dangers to which we had adverted, caused to be placed on the November 1948 general election ballot what subsequently became, following approval by the voters by a margin of more than two to one, former article IV, section 1, subdivision (c) of the Constitution, which was reenacted by the voters in its present form as a part of the 1966 constitutional revision.

For reasons which I have set out at length in my dissenting opinion in Schmitz v. Younger (1978) 21 Cal.3d 90, at pages 96–101, I am of the view that the mandate of article II, section 8, subdivision (d) is satisfied only when the provisions of an initiative measure can be said to be "functionally related in furtherance of a common underlying purpose." (21 Cal.3d at p. 97.) This standard,

any one or more propositions offered, might grasp at that which they want, tacitly accepting the remainder. Minorities favoring each proposition severally might, thus aggregated, adopt all." (32 Cal.2d at pp. 346.)



which has recently been applied by this court in Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 230, accurately reflects the meaning of the initiative single subject rule in light of its history, and for this reason it is to be preferred in the initiative context to the broader, more vague "reasonably germane" test which is applicable in the context of legislative statutes.[2] As I proceed to explain, however, I am persuaded that the measure now before us fails either test.

Turning to the measure itself we find at the outset that it is of prodigious physical proportions. Containing 11 separate chapters and 215 sections, its text covered over 16 closely packed pages of the voter's pamphlet for the June 1974 Primary Election, and its printing in one edition of the annotated codes requires no less than 131 pages. (37B West's Ann. Gov. Code (1976 ed.) §§ 81000–91014, pp. 3–134.) As enacted, it was comprised of more than 20,000 words—or approximately 1,000 less than the

[2] It is notable in this respect that the legislative single subject rule, unlike that applicable in the case of initiatives, contemplates only a *partial* nullification in the event of violation. Article IV, section 9 provides: "A *statute* shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not in its title, *only the part not expressed is void.*" (Italics added.) Article II, section 8, subdivision (d), on the other hand, provides: "An *initiative* measure embracing more than one subject may not be submitted to the electors *or have any effect.* (Italics added.) The concern in the legislative context is thus whether a proposed statute contains material extraneous or not "reasonably germane" to the subject stated in the title; if it does, the extraneous material is simply stricken. In the initiative context, on the other hand, the issue is more sharply defined: a measure whose parts are not functionally related to a common subject or purpose is to be accorded no effect. In the one case, then, we seek only to exclude the extraneous; in the other, it is the validity of the whole which is at stake.

measure which we confronted in the *McFadden* case. Although there is no specific constitutional limit on the size of an initiative measure,[3] it might be expected that one requiring this amount of legal technical verbiage would undertake to address itself to more than one "subject." Such expectations, as I point out below, are in this case not held in vain.

It is interesting to note that the parties supporting the instant measure seem to have some difficulty agreeing upon the identity of the "single subject" which it is asserted to comprehend. Thus petitioner Fair Political Practices Commission claims that the initiative "concern[s] . . . the reform and integrity of the political process." Amici curiae Common Cause, League of Women Voters and Sierra Club, on the other hand, appear to change the focus somewhat, asserting at oral argument that the "single subject" is that of "making government more accountable by diminishing the influence of wealth on governmental processes." A brief filed by other amici curiae in support of the measure identifies the prevention of "deceptive practices" as its subject matter, while the Attorney General, who has filed a return in support of the petition for mandate, prefers to speak simply in terms of "political reform." It is not surprising, in my view, that such a lack of unanimity

[3] It is noteworthy that one commentator, addressing himself to the physical proportions of the measure here in question, was led to conclude: "Even though the Political Reform Act [of 1974] was successful, it is highly unlikely that the voters understood even a substantial portion of the Act." (Note, *The California Initiative Process: A Suggestion for Reform* (1975) 48 So.Cal.L.Rev. 922, 935, fn. 65.)



should appear, for all of the aforesaid formulations speak not to the matter of the measure's *subject* but rather to the general *policy objectives* it seeks to achieve as a result of the comprehensive legislative program it represents. In short, the parties' difficulty in expressing the "single subject" of the Political Reform Act of 1974 results from the simple fact that there *is* no single subject; rather the measure speaks to a multitude of subjects which, by means of a broad statement of policy objective, the parties seek to place under a single umbrella.[4] The single subject rule, however, is not concerned with umbrellas; it is concerned with *subjects.*

No purpose would here be served by undertaking a listing of what I conceive to be the various subjects comprehended in the measure before us. It suffices, I think, to point out the obvious: The regulation of the election process, no matter how broadly defined, has little to do with the regulation of the day-to-day activities of lobby-

[4] To be distinguished from the instant situation, I believe, it that which was recently before us in the so-called "Proposition 13 cases" (Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, *supra,* 22 Cal.3d 208). Although the measure there in question had four major elements—a real property tax rate limitation, a real property assessment limitation, a restriction on state taxes, and a restriction on local taxes—we pointed out that each was part of "an interlocking 'package' deemed necessary by the initiative's framers to assure *effective* real property tax relief," i.e., real property tax savings which could not be "withdrawn or depleted by additional or increased local levies of other than property taxes. . . ." (22 Cal.3d at p. 231.) In this respect we contrasted the case of Kerby v. Luhrs (1934) 44 Ariz. 208, a measure dealing with diverse matters relating to "taxation." (*Id.* at 231–232.) In my view the measure here before us, similarly dealing in diverse ways with various practices under the road banner of "political reform," should share the fate of the Arizona "taxation" initiative.

ists. The adoption of codes governing conflicts of interest in all state agencies—the provisions of such codes to affect any employee occupying a position which "involve[s] the making of decisions which may foreseeably have a material effect on any financial interest" (§ 87302, subd. (a))—is yet another matter. Although each of these might conceivably form a part of a unified legislative program directed toward the policy objective of "political reform," each concerns an entirely different and discrete *subject.*

I do not of course suggest that the single subject requirement of our Constitution precludes the presentation to the electorate, on a single ballot, of a number of related subjects in furtherance of some underlying policy objective. What I do suggest is that when this is done, our Constitution requires that each subject be separately set out by means of an independent proposition, so that voters favoring one aspect of the program but opposed to another may have the opportunity to accurately reflect these views in their votes. Any other result, I submit, has the effect of transforming what has been termed the "legislative battering ram" of the initiative (see Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, *supra,* 22 Cal.3d 208, 228, 229, 232) into a legislative blunderbuss.

I would deny the writ.

Manuel, J.



## FAIR POLITICAL PRACTICES COMM. v. SUPERIOR COURT L.A. 30904

## DISSENTING OPINION BY BIRD, C.J.

I cannot agree with the pinched view of the First Amendment which the majority adopt in declaring unconstitutional Government Code section 86202 and subdivisions (d) and (e) of Government Code sections 86107 and 86109. In one fell swoop, this court has gutted the Political Reform Act of 1974, which ended the undue influence of lobbyists and moneyed interests over our state government. Today's decision moves California farther from, not closer to, a First Amendment society where individuals are able to speak meaningfully with their public representatives and be heard. Once again, "money will be the mother's milk of politics" with the third house owning the dairy.

In Buckley v. Valeo (1976) 424 U.S. 1, the United States Supreme Court recognized that the realities of modern campaigning drives candidates to depend more and more on large campaign contributors. The court recognized that this dependence meant that democracy would not be served if wealthy benefactors controlled elected officials. The *Buckley* court was concerned that there inevitably lingered "the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." (*Id.,* at p. 27.) Antithetical to the very idea of *representative* democracy, the Supreme Court noted, is "the actuality and appearance of corruption resulting from large individual financial contribu-

tions [was] . . . a constitutionally sufficient justification" for placing a limit of $1,000 on campaign contributions.

The California Political Reform Act aims at freeing government and its officials from the actuality or appearance of corruption. Instead of imposing contribution limits on everyone as in the *Buckley* case, the California law zeroes in on the age old problem of lobbyist money. The abuse inherent in having persons paid to influence state policy pass money to the formulators of state policy is all too apparent.

The majority find section 86202 overbroad because it (1) prohibits "small" as well as "large" contributions; (2) prohibits contributions to state candidates other than those whom the lobbyist is trying to influence; and (3) includes lobbying before state administrative agencies as well as elected officials in state government. The majority choose to ignore the fact that there is a heightened threat to the image and integrity of state government which results when a lobbyist can use money to purchase influence.

The majority's distinction between "large" and "small" campaign contributions misreads *Buckley.* The federal election laws themselves contain a *total* ban on large or small campaign contributions from corporations, unions, and national banks to any candidate for federal office. (2 U.S.C. 441b.) These prohibitions have been held to be constitutional. (See, e.g., United States v. Chestnut (S.D.N.Y. 1975) 394 F.Supp. 581, 587–591; United States v. Boyle (D.C. Cir. 1973) 482 F.2d 755, 763–764.) Even the United States Supreme Court "has



repeatedly recognized that one of the principal purposes of [the] prohibition is 'to avoid the deleterious influences on . . . elections resulting from the use of money by those who exercise control over large aggregations of capital.' United States v. Automobile Workers, 352 U.S. 567, 585 (1957). See Pipefitters v. United States, 407 U.S. 385, 415–416 (1972); United States v. CIO, 335 U.S., at 113." (First National Bank of Boston v. Bellotti (1978) 435 U.S. 765, 812, dis. opn. of White, J.)

It has never been held to be too drastic to ban corporate and union campaign contributions. Rather, the courts have emphasized that the statutes allow corporations and unions to establish segregated political funds to which they may solicit voluntary contributions and from which they may make campaign contributions. (See United States v. Chestnut, *supra,* 394 F.Supp. at p. 591.) The narrow reach of California's ban on lobbyist contributions is similar. The employers of lobbyists are free to contribute as they please to political candidates. Lobbyists may recommend to their employers to whom they should contribute and in what amounts. (Institute of Governmental Advocates v. Younger (1977) 70 Cal. App.3d 878, 884.) Further, lobbyists are free to express their own personal preferences in politics, except they cannot make campaign contributions or certain size gifts to candidates for state office.

Section 86202 attempts to prevent the actuality or appearance of public officials as the captive of special interest groups by removing from lobbyists the ability to buy the ear of state officials with money. The people

have every right to prevent the venal spectacle of lobbyists passing money to candidates or officials whose acts they want to influence. This compelling state interest was accomplished by placing restrictions on lobbyist contributions and gifts to officeholders.[1]

The narrow restrictions of the Political Reform Act pale beside the restrictions of the Hatch Act on federal employees. Those who come within the confines of the Hatch Act are prohibited from taking "an active part in political management or in political campaigns." This results in a ban on just about all partisan political activity by federal employees. Despite this fact, the United States Supreme Court has found the Hatch Act constitutional on two occasions. (CSC v. Letter Carriers (1973) 413 U.S. 548; United Public Workers v. Mitchell (1947) 330 U.S. 75.) The prohibition on partisan political activity by federal employees was held to be justified by the government's compelling interest in preserving the civil service from the corruption that might result if one's job came to depend on one's politics. (CSC v. Letter Carriers, *supra,* 413 U.S. at pp. 564–567.)

In *Letter Carriers,* the United States Supreme Court acknowledged that the federal government's interest in preserving its own integrity was sufficient to justify restrictions on the First Amendment rights of federal employees. Similarly, the state government's interest in preserving its own integrity is equally compelling. If the Hatch Act prohibitions survived strict scrutiny, the less restrictive Political Reform Act prohibitions on lobbyists certainly should.

[1] If section 86202 had been written so as to allow a lobbyist to express his personal views about a candidate by contributing his own personal money as opposed to his employer's, that exception would have rendered the law a nullity from the beginning. Special interest groups employing lobbyists could have simply increased their lobbyists' salaries, on the tacit understanding that the lobbyist would use that extra money to make campaign contributions.



The majority misuse the *Buckley* case and refer out of context to the special problems involved with "large" political contributions. The court was reviewing a statute which restricted the amount of money *anyone* could contribute in a federal election. Consequently, the Supreme Court focused on the corruption inherent in the dependence of candidates on large contributions. *Buckley* does not indicate that dependence on large contributions is the only fertile source of corruption. The majority err when they apply the language of *Buckley* to a new fact situation without considering the nature of lobbying.

Lobbyists are employed by special interest groups to achieve a particular result. They are successful only to the extent they are able to influence the vote or policy of legislators or public officials. Lobbyists are paid to advocate their employers' viewpoint. The employers are usually "big money" interests. Daily contact with those they seek to influence is essential.

Lobbyists set about their task of influencing government officials by establishing personal contact. Obviously, the ability to give gifts, buy lunches, contribute to campaigns helps a lobbyist ensure that his invitations to talk over matters with public officials are accepted. *Ac-*

*cess* is the key to influence. Having opened the door, the campaign contribution whether large or small is in a position to speak not only for itself but to deliver a message amplified by the resources of the special interest groups employing the lobbyists. Special interest groups employ lobbyists because such groups believe the greater the access they have to state officials, the greater the possibility that these officials will reflect their viewpoint. The giving of a campaign contribution, regardless of size, is sufficient to establish the necessary access.

The unfettered access of a lobbyist to state officials can defeat the basic idea of a society that is based on elective officials who represent *all* the people. The parties to this litigation stipulated that prior to the passage of the Political Reform Act, lobbyists regularly purchased meals and drinks for state officials; provided hunting, fishing and vacation trips for officials and their families; purchased liquor, art work and golf clubs; held weekly gatherings at which meals, drinks and entertainment were provided; and had complete control over the campaign funds of their employers, which included the power to determine who and how much an official would receive in political contributions.

> "[S]ome lobbyists engaged in the practices enumerated [above] for the purpose of gaining undue influence over legislators and state officials."

The United States Supreme Court many years ago upheld the Federal Regulation of Lobbying Act and recognized that "the voice of the people may all too easily be drowned out by the voice of special interest



groups seeking favored treatment while masquerading as proponents of the public weal." (United States v. Harriss (1954) 347 U.S. 612, 625.) In 1974, the voters of this state decided to insulate state officials from lobbyists and their undue influence by removing from them the ability to "buy" access and good will by dispensing gifts and contributions.

The First Amendment has never precluded our citizens from taking action to restore integrity to state government by achieving a certain balance between the access of the individual citizen and the access of the lobbyist to public representatives.

The majority opinion invalidates section 86202 based on the fact that the "prohibition applies to contributions to any and all candidates even though the lobbyist may never have occasion to lobby the candidate." (Maj. opn., *ante,* at p. __ [ typed maj. opn. at p. 17].) How can this fact justify invalidating section 86202? "Facial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged statute." (Broadrick v. Oklahoma (1973) 413 U.S. 601, 613.) If the majority consider the statute overbroad, they could have narrowly construed section 86202 so as to preclude lobbyists from contributing to candidates whom they lobby. Instead, the majority strike down section 86202, thereby allowing lobbyists to contribute to the campaigns of candidates they do in fact lobby. In other words, the majority opinion today achieves a result it does not seek to defend.

Further, the majority make a distinction between lob-

byists who contribute to officials who do and those who do not have jurisdiction over the kind of decisions the lobbyist is seeking to influence. This distinction overlooks a practical reality. "[M]embers of the Legislature and the constitutional officers . . . play a role in (1) defining [an] agency's powers; (2) adopting legislation bearing on the work of [an] agency; (3) determining the budget of [an] agency; (4) making or confirming appointments to [an] agency; and (5) considering future appointments to other governmental posts for the incumbent agency officials. In addition to these factors is the prestige of these elected officials which may give their communications with and urgings upon administrative agency officials special weight. Because of this extensive influence, the purposes of the Political Reform Act necessitate that the . . . prohibitions on . . . contributions be applicable to all elected state officers and candidates for such offices and to all legislative officials, even in the case of a lobbyist who confines his activities to one or more administrative agencies." (Cal. Admin. Code, tit. 2, § 18600.) This opinion by the Fair Political Practices Commission points up the fatal weakness in the majority's overbreadth analysis. Unless lobbyists are prevented from contributing to all elective state officers or to the candidates for state office, the Political Reform Act could never achieve its aim of curbing the abuses that led to its passage in the first place.

Next, the majority find that "the definition of lobbyist [in section 86202] is extremely broad, [and] include[s] persons who appear regularly before administrative agencies . . . ." (Maj. opn., *ante,* at p. __ [typed maj. opn. at p. 17].) This criticism lacks merit. Administrative



agencies often deal with the most important decisions our government makes. Therefore, it would have been sheer folly for a law purporting to regulate lobbying to have excluded from its scope the appearance of lobbyists before administrative agencies which are involved in rule-making, rate-making or quasi-legislative proceedings. (Gov. Code, § 82002.) The Fair Political Practices Commission's own interpretation of the scope of the Political Reform Act limits its reach as it relates to administrative lobbying. "The purpose of the prohibitions and disclosure requirements [of the Political Reform Act] as applied to agency officials is to assure that no undue economic influences will be brought to bear on such officials when they undertake administrative actions. This purpose would not be furthered if the prohibitions and disclosure requirements were interpreted as being applicable to all agency officials, without regard to whether the lobbyist or the filer had attempted to influence administrative actions of the official's agency." Therefore, the commission has limited the lobbying disclosure requirements and prohibitions of the act "to officials of agencies the administrative actions of which the lobbyist or filer has attempted to influence." (Cal. Admin. Code, tit. 2, § 18600.)

Even more perplexing is the majority's decision to invalidate subdivisions (d) and (e) of Government Code sections 86107 and 86109. Section 86107, subdivision (d) requires lobbyists to file a report listing all economic transactions with any elective state official, legislative official, agency official, state candidate, or with a member of the immediate family of any such official or candidate. Section 86107, subdivision (e) requires lobby-

ists to report transactions with any business entity in which "the lobbyist knows or has reason to know that [a state official or state candidate] is a proprietor, partner, director, officer or manager, or has more than a fifty percent ownership interest," if the transactions total $500 or more in a calendar year. Section 86109, subdivisions (d) and (e) impose similar disclosure requirements on employers of lobbyists or any person who pays $250 or more in any month to influence legislative or administrative action.

These reporting requirements are held to be unduly onerous by the majority because transactions must be disclosed "which may be entirely unrelated to lobbyist activities." (Maj. opn., *ante*, at p. __ [typed maj. opn. at p. 23].) The majority fail to realize that if it were not for these provisions, lobbyists and their employers could entirely avoid the disclosure requirements of the act by giving money and other items of value through their families or businesses to state officials or candidates. The drafters of the Political Reform Act should not be criticized because they foresaw and, therefore, plugged the expected loopholes. [3]

[3] The flaws in the majority's argument are obvious when their own example is considered. (*Ante,* at p._____ [typed maj. opn. at p. 23].) If a state official is a director or a majority shareholder of the Bank of America, then the fact that a person lobbying that official is also engaging in business transactions of $500 or more with the Bank of America is highly relevant information to assess the economic pressure a lobbyist may bring on the state official. The official's position with the Bank of America has a material or substantial economic impact on that person. The $500 threshold is protection against onerous or trivial reporting requirements.

Further, the Fair Political Practices Commission has adopted a regulation which requires an agency lobbyist to disclose his various dealings and transactions with an agency official only if he is engaged in lobbying before that official's agency. (Cal. Admin. Code, tit. 2, § 18600.)



In County of Nevada v. MacMillen (1974) 11 Cal. 3d 662, this court upheld the Governmental Conflicts of Interest Act (Gov. Code, § 3600 et seq.) against similar charges of prying into personal finances. A candidate had to disclose the nature of the economic holdings of his spouse and dependent children. This was held to be reasonable because this provision prevented a candidate from avoiding disclosure of his finances entirely by transferring title to his spouse or children. (*Id.,* at pp. 675–676.) In striking down the disclosure requirements of the Political Reform Act that lobbyists disclose transactions with the immediate families of state candidates or officeholders, the majority ignore the authority of County of Nevada v. MacMillen, *supra.*

The Political Reform Act of 1974 brought to state government a measure of integrity not previously present. The First Amendment was served by the assurance that access to elected officials did not belong only to those with money. The majority opinion does not advance the First Amendment today. Rather, it takes us a giant step backward to the times when special interests represented by lobbyists were the loudest and most powerful voices in our legislative halls.

Bird, C.J.

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# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

INSTITUTE OF GOVERNMENTAL ADVOCATES, a non-profit corporation,
*Plaintiff,*

vs.

EVELLE J. YOUNGER, as Attorney General of the State of California and JOHN K. VAN de KAMP, as District Attorney of the County of Los Angeles,
*Defendants.*

FAIR POLITICAL PRACTICES COMMISSION, an agency of the State of California,
*Intervenor.*

NO. C 110 052
JUDGMENT

On September 14 and November 14, 1977, this cause came on for trial in Department 33 of this Court, the Honorable Parks Stillwell, Judge Presiding. Plaintiff appeared by its attorneys Ball, Hunt, Hart, Brown &

Baerwitz, by John R. McDonough, Laurence F. Jay, and Allan E. Tebbetts; intervenor Fair Political Practices Commission appeared by its attorney Lee C. Rosenthal; defendant Evelle J. Younger appeared by his attorney Floyd D. Shimomura; and defendant John K. Van de Kamp, having previously entered a written appearance by his attorney Edward G. Pozorski, did not appear. The Court received evidence by way of a Stipulation to Facts for Trial and a Supplemental Stipulation to Facts for Trial; briefs were filed by the parties; oral argument was had; and the matter was submitted. The Court having considered the evidence and the written and oral arguments of the parties, and having made its Findings of Fact and Conclusions of Law, now therefore,

IT IS ORDERED, ADJUDGED AND DECREED:

1. That the Political Reform Act of 1974, Title 9 of the Government Code, is void and of no effect.

2. That Sections 86202 and 86203 of the Government Code, and Chapter 6 of Title 9 of the Government Code with the exception of Government Code Section 86108 (b) and Government Code Sections 86109 and 86110 insofar as they pertain to persons defined in Government Code Section 86108(b), are unconstitutional and void.

3. That defendants Evelle J. Younger and John K. Van de Kamp, and intervenor Fair Political Practices Commission, and their agents, employees, and all persons acting in concert with any of them, are permanently enjoined from initiating any criminal or civil proceedings to enforce Section 86202 of the



Government Code, Section 86203 of the Government Code, any provisions of Chapter 6 of Title 9 of the Government Code with the exception of Government Code Section 86108(b) and Government Code Sections 86109 and 86110 insofar as they pertain to persons defined in Government Code Section 86108(b), and any provisions of Title 9 of the Government Code.

4. That defendants Evelle J. Younger and John K. Van de Kamp, and intervenor Fair Political Practices Commission, and their agents, employees, and all persons acting in concert with any of them, are permanently enjoined from expending funds of the State of California or the County of Los Angeles or from utilizing facilities, assets, property and personnel of the State of California or the County of Los Angeles, to act or to prepare to act to implement, administer, or enforce Section 86202 of the Government Code, Section 86203 of the Government Code, any provisions of Chapter 6 of Title 9 of the Government Code with the exception of Government Code Section 86108(b) and Government Code Sections 86109 and 86110 insofar as they pertain to persons defined in Government Code Section 86108(b), and any provisions of Title 9 of the Government Code.

5. That intervenor Fair Political Practices Commission, its agents, employees, and all persons acting in concert with them, are permanently enjoined from commencing proceedings as civil prosecutor against any lobbyist based on the single act of advising or making a recommendation to the employer of the

lobbyist with regard to the making of a political contribution, where the advice or recommendation results in a contribution from the employer.

6. That intervenor Fair Political Practices Commission take nothing by its complaint in intervention.

7. That the Third and Fifth Causes of Action of plaintiff's complaint are dismissed.

8. That plaintiff, Institute of Governmental Advocates, have and recover its costs of this action from and against defendants Evelle J. Younger and John K. Van de Kamp and intervenor Fair Political Practices Commission, in the sum of $_____.

9. That execution of this Judgment, with the exception of Paragraph 5 hereof, is stayed for a period of sixty (60) days from the date of entry hereof.

DATED: January 16, 1978.

PARKS STILLWELL
JUDGE OF SUPERIOR COURT



FILED
Jan 16 1978
JOHN J. CORCORAN, County Clerk
By _____, Deputy

BALL, HUNT, HART, BROWN & BAERWITZ
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Beverly Hills, California 90210
(213) 278-1960
Attorneys for Plaintiff

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

INSTITUTE OF GOVERNMENTAL ADVOCATES, a non-profit corporation,
*Plaintiff,*

vs.

EVELLE J. YOUNGER, as Attorney General of the State of Claifornia, and JOHN K. VAN de KAMP, as District Attorney of the County of Los Angeles,
*Defendants.*

FAIR POLITICAL PRACTICES COMMISSION, an agency of the State of California,
*Intervenor.*

NO. C 110 052
FINDINGS OF FACT AND CONCLUSIONS OF LAW

On September 14, and November 14, 1977, this cause came on for trial in Department 33 of this Court, the Honorable Parks Stillwell, Judge Presiding. Plaintiff appeared by its attorneys, Ball, Hunt, Hart, Brown &

Baerwitz, by John R. McDonough, Laurence F. Jay, and Allan E. Tebbetts; intervenor Fair Political Practices Commission appeared by its attorney Lee C. Rosenthal; defendant Evelle J. Younger appeared by his attorney Floyd D. Shimomura; and defendant John K. Van de Kamp, having previously entered a written appearance by his attorney Edward G. Pozorski, did not appear. The Court received evidence by way of a Stipulation to Facts for Trial and Supplemental Stipulation to Facts for Trial; briefs were filed by the parties; oral argument was had; and the matter was submitted. Having considered the evidence and the written and oral arguments of the parties, and having announced its intended decision, the Court now makes the following Findings of Fact and Conclusions of Law.

## FINDINGS OF FACT

1. Plaintiff, Institute of Governmental Advocates (hereinafter, "IGA"), is a bona fide California nonprofit corporation formed to promote the interests of governmental advocates and lobbyists. Within one year prior to the commencement of this action, plaintiff paid a tax within and to the State of California.

2. The members of IGA are or have been engaged in governmental advocacy. Forty-seven of IGA's fifty members are lobbyists registered with the Secretary of State pursuant to Chapter 6 of the Political Reform Act of 1974, Government Code Title 9 (hereinafter, "the Act"). The members of IGA are or may be subject to the requirements and restrictions upon lobbyists contained



in Chapter 6 of the Act.

3. Plaintiff's lobbyist members authorized plaintiff to commence and maintain this action on their behalf.

4. Defendant Evelle J. Younger is the Attorney General of the State of California, and is charged by Government Code § 91001(a) with prosecuting certain violations of the Act. Defendant Younger has prepared to act, has acted, and, unless restrained by order of this Court, will continue to act and prepare to act to implement, administer, and enforce the Act, which action has involved, now involves and will in the future involve substantial expenditures of the funds of the State of California and the significant utilization of California State facilities, assets, property and personnel.

5. Defendant John K. Van de Kamp is the District Attorney of Los Angeles County, and is charged by Government Code § 91001(a) with prosecuting certain violations of the Act. Defendant Van de Kamp has prepared to act, has acted, and, unless restrained by order of this Court, will continue to act and prepare to act to implement, administer, and enforce the Act, which action has involved, now involves and will in the future involve substantial expenditures of the funds of the County of Los Angeles and the significant utilization of Los Angeles County facilities, assets, property and personnel.

6. Intervenor, Fair Political Practices Commission, (hereinafter, "the FPPC") is a public agency of the State of California created by the Act, and is charged by Government Code § 91001(b) with prosecuting certain

violations of the Act. The FPPC has prepared to act, has acted, and, unless restrained by order of this Court, will continue to act and prepare to act to implement, administer, and enforce the Act, which action has involved, now involves and will in the future involve substantial expenditures of the funds of the State of California and the significant utilization of California State facilities, assets, property and personnel.

7. An actual controversy has arisen and now exists between plaintiff and its members on the one hand, and defendants Younger and Van de Kamp and the FPPC on the other hand, in that plaintiff contends that Government Code §§ 86202 and 86203 and the whole of Chapter 6 of the Act with the exception of Government Code § 86108(b) and Government Code §§ 86109 and 86110 insofar as they pertain to persons defined in Government Code § 86108(b), and the whole of the Act, are unconstitutional and void, whereas said defendants and the FPPC contend that these statutes are constitutionally valid.

8. Members of IGA desire to make contributions proscribed by Government Code § 86202, to act as agents or intermediaries in the making of such contributions and to arrange for the making of such contributions by themselves and by other persons, to candidates for state offices, committees supporting those candidates, and elected state officers, and would do so if not prevented by § 86202. Such contributions would include both contributions to candidates for elective state office (as defined in Government Code § 82024) whom members of



IGA are retained to influence and also contributions to those whom they are not retained to influence, and with whom they have no contact, other than occasional social contact in some instances.

9. Members of IGA desire to make gifts of more than $10.00 per month, and to act as agents or intermediaries in the making of gifts and arrange for the making of gifts by themselves and by other persons, to elected state officers and state legislative and agency officials (as defined in the Act), and would do so if not prevented by Government Code § 86203.

10. Members of IGA desire to make contributions proscribed by Government Code § 86202 in order to help elect public officials in whom they have confidence and by whom they believe they will be given a fair hearing when presenting their clients' views and positions for consideration. Members of IGA desire to make gifts proscribed by Government Code § 86203 in order to be able to create opportunities to meet the recipients thereof, to become known to them, and thus to be able more effectively to present to them the views and positions of the clients of IGA members should the occasion to do so arise.

11. Prior to the enactment of the Act, some lobbyists engaged in one or more of the following practices:

A. The giving of gifts paid for by lobbyists' employers and lobbyists themselves to legislators and other state officials including:

(1) purchase of meals, drinks and entertainment on a continuing basis:

(2) hunting, fishing and vacation trips including air transportation for public officials and their families;

(3) liquor, art work, golf clubs and balls and other similar tangible items.

B. Holding weekly gatherings at which buffet meals, drinks and entertainment were provided and to which legislators and certain other public officials had open and continuing invitations. These weekly gatherings, commonly known as Moose Milk and Derby Club, were paid for entirely by lobbyists.

C. Allowing legislators and public officials to charge meals, drinks and entertainment for themselves and their guests to the accounts of lobbyists.

D. Providing meals, drinks and entertainment to legislators and public officials and their guests when so requested by the legislator or public official.

E. Having discretionary control over campaign funds of their employers including the power to determine which candidates would receive political contributions and how large a contribution a candidate would receive.

F. Acting as the conduit for delivery of their employers' campaign contributions to candidates.

G. Making contributions of their own money to candidates.

Under the Act, these practices are either prohibited or substantially restricted insofar as members of IGA are concerned.

12. Some lobbyists engaged in the practices enumer-



ated in paragraph 11 above for the purpose of gaining undue influence over legislators and state officials.

13. On November 18, 1975, this Court, on motion of plaintiff, issued its preliminary injunction enjoining the FPPC, its agents, officers, employees, and representatives, and all persons acting in concert or participating with them, from commencing proceedings as civil prosecutor against any lobbyist based on the single act of advising or making a recommendation to the employer of the lobbyist with regard to the making of a political contribution, where the advice or recommendation results in a contribution from the employer. On June 21, 1977, the granting of this injunction was affirmed by a judgment of the Court of Appeal, Second Appellate District, which judgment has become final.

14. To the extent that any of the foregoing Findings of Fact may be deemed to be a conclusion of law, this Court so concludes.

## CONCLUSIONS OF LAW

1. The initative measure of denominated Proposition 9 on the June 4, 1974 election ballot (hereinafter, "Proposition 9") embraced more than one subject and therefore Title 9 of the Government Code, purportedly enacted by Proposition 9, is void and of no effect by reason of Article 2, §8(d) of the California Constitution.

2. Government Code §86202 is unconstitutional and void because (a) it unjustifiably and overbroadly infringes upon the rights of lobbyists, including plaintiff's members, of free speech, association, petition, and polit-

ical participation, in violation of the Fourteenth Amendment to the United States Constitution and Article 1, §§ 1, 2 and 3 of the California Constitution; and (b) it classifies lobbyists, including plaintiff's members, in a manner that is arbitrary, capricious, without rational basis, and not justified or necessitated by any compelling state interest, and thus denies equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and Article 1, §7 and Article 4, §16(a) of the California Constitution.

3. Government Code §86203 is unconstitutional and void because it classifies lobbyists, including plaintiff's members, in a manner that is arbitrary, capricious, without rational basis, and not justified or necessitated by any compelling state interest, and thus denies equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and Article 1, §7 and Article 4, §16(a) of the California Constitution.

4. Chapter 6 of Title 9 of the Government Code, with the exception of Government Code §86108(b) and Government Code §§86109 and 86110 insofar as they pertain to persons defined in Government Code §86108(b), is unconstitutional and void because it classifies lobbyists, including plaintiff's members, in a manner that is arbitrary, capricious, without rational basis, and not justified or necessitated by any compelling state interest, and thus denies equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and Article 1, §7 and Article 4, §16(a) of the California Constitution.



5. Plaintiff is entitled to this Court's judgment declaring that Title 9 of the Government Code is void and of no effect.

6. Plaintiff is entitled to this Court's judgment declaring that Government Code §§86202 and 86203, and Chapter 6 of Title 9 of the Government Code with the exception of Government Code §86108(b) and Government Code §§86109 and 86110 insofar as they pertain to persons defined in Government Code §86108(b), are unconstitutional and void.

7. Plaintiff is entitled to this Court's permanent injunction enjoining defendants Younger and Van de Kamp, and the FPPC, and their agents, employees, and all persons acting in concert with any of them, from initiating any criminal or civil proceedings to enforce Government Code §86202, Government Code §86203, any provisions of Chapter 6 of Title 9 of the Government Code with the exception of Government Code §86108(b) and Government Code §§86109 and 86110 insofar as they pertain to persons defined in Government Code §86108(b), and any provisions of Title 9 of the Government Code.

8. Plaintiff is entitled to this Court's permanent injunction enjoining defendants Younger and Van de Kamp, and the FPPC, and their agents, employees, and all persons acting in concert with any of them, from expending funds of the State of California or the County of Los Angeles or utilizing facilities, assets, property and personnel of the State of California or the County of Los Angeles, to act or to prepare to act to implement, admin-

ister, or enforce Government Code §86202, Government Code §86203, any provisions of Chapter 6 of Title 9 of the Government Code with the exception of Government Code §86108 (b) and Government Code §§86109 and 86110 insofar as they pertain to persons defined in Government Code §86108(b), and any provisions of Title 9 of the Government Code.

9. Plaintiff is entitled to have this Court's preliminary injunction against the FPPC, heretofore issued in this action, made permanent.

10. The FPPC is not entitled to the relief requested in its complaint in intervention.

11. To the extent that any of the foregoing Conclusions of Law may be deemed to be a finding of fact, this Court so finds.

DATED: January 16, 1978.

PARKS STILLWELL
Judge of the Superior Court

# APPENDIX II

# STATUTES AND REGULATIONS

STATUTES

California Government Code

Prohibitions:

**86202. Unlawful Contribution.** It shall be unlawful for a lobbyist to make a contribution, or to act as an agent or intermediary in the making of any contribution, or to arrange for the making of any contribution by himself or by any other person.

**86204. Receipt of Unlawful Contribution or Gift.** It shall be unlawful for any person knowingly to receive any contribution or gift which is made unlawful by Section 86202 or 86203.

Definitions:

Lobbyist

**82039. Lobbyist.** "Lobbyist" means any person who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action, if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action. No person is a lobbyist by reason of activities described in Section 86300.

**82032. Influencing Legislative or Administrative Action.** "Influencing legislative or administrative action" means promoting, supporting, influencing, modifying,

opposing or delaying any legislative or administrative action by any means, including but not limited to the provision or use of information, statistics, studies or analyses.

**82004. Agency Official.** "Agency official" means any member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in any administrative action in other than a purely clerical, secretarial or ministerial capacity.

**82002. Administrative Action.** "Administrative action" means the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding, which shall include any proceeding governed by Chapter 4.5 of Division 3 of Title 2 of the Government Code (beginning with Section 11371).

Contribution

**86200. Contribution.** "Contribution" as used in this article means a contribution made to a state candidate, a committee supporting a state candidate, or an elected state officer.

**82015. Contribution.** "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.



The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund raising events; the candidate's own money or property used on behalf of his candidacy; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

The term "contribution" further includes any transfer of anything of value received by a committee from another committee.

The term "contribution" does not include amounts received pursuant to an enforceable promise to the extent such amounts have been previously reported as a contribution. However, the fact that such amounts have been received shall be indicated in the appropriate campaign statement.

Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his own travel expenses if such payments are made voluntarily

without any understanding or agreement that they shall be, directly or indirectly, repaid to him.

State Candidates and Officers

**82007. Candidate.** "Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution or makes an expenditure or gives his consent for any other person to receive a contribution or make an expenditure with a view to bringing about his nomination or election to any elective office, whether or not the specific elective office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he has announced his candidacy or filed a declaration of candidacy at such time. "Candidate" also includes any officeholder who is the subject of a recall election. "Candidate" does not include any person within the meaning of Section 301 (b) of the Federal Election Campaign Act of 1971.

**82050. State Candidate.** "State candidate" means a candidate who seeks nomination or election to any elective state office.

**82021. Elected State Officer.** "Elected state officer" means any person who holds an elective state office or has been elected to an elective state office but has not yet taken office. A person who is appointed to fill a vacant elective state office is an elected state officer.



**82024. Elective State Office.** "Elective state office" means the office of Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, member of the Legislature and member of the State Board of Equalization.

Committee

**82013. Committee.** "Committee" means any person or combination of persons who directly or indirectly receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party, whether national, state or local, if:

(a) Contributions received total five hundred dollars ($500) or more in a calendar year;

(b) Independent expenditures total five hundred dollars ($500) or more in a calendar year; or

(c) Contributions made to or at the behest of candidates and committees total five thousand dollars ($5,000) or more in a calendar year.

Severability:

**81015. Severability.** If any provision of this title, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this title to the extent it can be given effect, or the

application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this title are severable.

REGULATION

2 California Administrative Code Section 18239

**18239. "Lobbyist": Definition of Terms Used in Gov. Code Section 82039** (Gov. Code Section 82039)

As used in Section 82039:

(a) "Reasonable travel expense" means transportation expense plus a reasonable sum for food and lodging.

(b) "Communicate directly" (and "direct communication" in this regulation) means to appear as a witness, to talk (either on the telephone or in person) with any elective state official, legislative official, or agency official, to correspond with such officials or to answer questions or inquiries from such officials, regardless of whether the communication is in person or through an agent.

(c) "Agent" includes only those persons who act under the direct supervision or direct orders of another person to accomplish the specific goals of that person.

(d) "Influencing legislative or administrative action" means communicating directly or taking any other action for the principal purpose of promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action.

(e) "Substantial or regular" means meeting one of the following tests:



(1) *Compensation test.* Receiving or becoming entitled to receive $1,000 or more in any 30-day period for the purpose of communicating directly with legislative, administrative or elective state officials, excluding reimbursements for reasonable travel expenses and wages which are received as a full-time employee engaged primarily to perform services other than influencing or attempting to influence legislative or administrative action.

(2) *Time tests.* In any period consisting of two consecutive calendar months:

(A) For persons who are not employees or officials of local government agencies:

1. Spending a total of 40 hours, including 10 hours in direct communication, influencing or attempting to influence legislative action; or

2. Spending 40 hours engaging in administrative testimony and at least one hour of other direct communication with officials of the agency or agencies to whom the administrative testimony is directed; or

3. Spending 200 hours engaging in administrative testimony.

(B) For persons who are employees or officials of local government agencies:

1. Spending a total of 40 hours, including 10 hours in direct communication, influencing or attempting to influence legislative or administrative action; or

2. Spending a total of 100 hours, including 10

hours in direct communication, influencing or attempting to influence legislative or administrative action; or

3. Spending 40 hours engaging in administrative testimony and at least one hour of other direct communication with officials of the agency to whom the administrative testimony is directed; or

4. Spending 200 hours engaging in administrative testimony.

(3) *Definitions.* For purposes of the time and compensation tests established by this subsection:

(A) "Influencing or attempting to influence legislative or administrative action" and "communicating directly":

1. Does not include administrative testimony unless the person providing the testimony has, during the preceding six calendar months, made or arranged for the making of a gift of $10 or more in value to any legislative official or official of the agency to whom the testimony is submitted;

2. Does not include travel time;

3. Does not include time spent on research, i.e., the gathering of information, statistics, studies or analyses, the preparation of legal pleadings, briefs, memoranda or the preparation of bill analyses.

(B) "Administrative testimony" means influencing or attempting to influence administrative action by acting as counsel in, appearing as a witness in, or preparing written submissions, including answers to inquiries, which become part of the record of any



regulatory or administrative agency's public proceeding:

1. Which is conducted as an open public hearing for which public notice is given; and

2. Of which a record is created in a manner which makes possible the creation of a transcript; and

3. With respect to which full public access is provided to such record or transcript and to all written material which is submitted to become part of the record.

(C) "Official of the agency" means only the appointed, elective or statutory members of the agency, and those members of the staff of the agency who make recommendations to such persons or who have decision making authority on staff recommendations to such persons.

COMMENTS TO REGULATION 18239:

Comment Regarding Subsection (d): "Influencing Legislative or Administrative Action"

The test to determine whether or not a person's activity constitutes "influencing legislative or administrative action" is one of fact: what is the principal purpose of the activity? If the purpose of the activity is to promote, support, influence, modify, oppose or delay any legislative or administrative action, then the activity is within the definition.

A lobbyist normally is not retained merely to communicate with state officials but is also expected to perform

a number of other activities which assist both the lobbyist and the lobbyist's employer in promoting or defeating legislative or administrative action. Such activities include, among other things, administering the lobbyist's office, monitoring bills and regulations which one is attempting to influence, preparing testimony and presentations, attending hearings and floor debates on bills and regulations which one is attempting to influence, arranging for witnesses, conferring with the employer, communicating by phone or mail with the lobbyist's employer or members of his association, waiting to meet with staff or officials, etc. The preceding list is not all inclusive but reflects normal activities of most lobbyists, and all such activities are integral parts of attempts to influence legislative or administrative action.

### Comment Regarding Subsection (e): "Substantial or Regular"

The proper interpretation of the phrase "substantial or regular" is essential in order to assure that actual lobbyists are included but those whose lobbying activities are merely casual and incidental are excluded. (Compare *United States v. Rumely,* 345 U.S. 41 (1953), with *United States v. Harriss,* 347 U.S. 612 (1954).) The present regulation, by applying simple mechanical tests, will make it possible for persons easily to determine whether they are required to register as lobbyists and are thus subject to the duties and prohibitions applicable to lobbyists under the Act.

Many local public employees and officials must, as part of their responsibilities, participate in the implementation of state programs. Their attempts to influence administrative action in such contexts, although they may contain an element of advocacy, are more typically analogous to staff work in which the local officials attempt to formulate regulations for the better implementation of a program. The regulation recognizes that such attempts to influence administrative action are intergovernmental and do not necessarily reflect advocacy in the sense of representing a special interest point of view and therefore establishes a higher "substantial or regular" threshold on public employees' attempts to influence administrative action. With respect to attempts to influence *legislative* action, however, public employees and officials are held to the same threshold requirement as any other person.



One of the alternative tests provided by this regulation is compensation rather than "time." The compensation threshold is $1,000 in any 30-day period. But the compensation must be for the purpose of *communicating directly* and must be compensation *other* than wages received as a full time employee with duties primarily other than lobbying. Compensation is narrowly defined so as to prevent a highly paid person from becoming a "lobbyist" by the compensation test because of an occasional appearance before or meeting with legislative or administrative officials.